

# The Solicitors' Journal

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## Current Topics.

### Call Within the Bar.

To cross the Rubicon from the outer to the inner Bar is a venture sometimes attended with considerable risk, and even the first step in court may occasion a certain nervousness to the newly-appointed King's Counsel as in his unaccustomed professional habiliments—silk gown, full-bottomed wig, knee breeches, and buckled shoes—he perambulates the courts to be formally inducted into his new status. This nervousness betrayed itself last week in the case of some of the newly-created silks by their failure to observe the formal ritual which custom has prescribed for the occasion, by refraining from taking their places in the front row till formally invited to do so by the presiding judge. Probably in the case of one or two this was due not merely to nervousness but also to the desire to get through the august but nevertheless tiresome ceremony as speedily as possible. When a later member of the group was punctilious in the observance of the strict ritual he was congratulated by the judge for his adherence to use and wont. This, by the way, was not the first occasion when a slight contretemps marked the advent of a new silk to the front row. When Mr. (afterwards Lord Justice) LUSH, the father of the late Mr. Justice LUSH, was created a Queen's Counsel, a nice point of etiquette arose. For some reason it was not till some days after his appointment that he appeared in his silk gown, and during the interval and still wearing his stuff gown, and before his being formally called within the Bar, he entered the Court of Common Pleas to argue a case, and took his seat within the Bar. Mr. Justice CRESSWELL, addressing Mr. CHAMBERS, the counsel on the other side, said: "I do not know, Mr. CHAMBERS, whether I can recognise the countenance beside you (Mr. LUSH)." The latter then intervened and said: "I mentioned the difficulty, my lord, yesterday to the Lord Chief Justice, and he said I might take my seat provisionally within the Bar." Being asked whether the Lord Chief Justice was sitting in court at the time, and being assured that he was, Mr. Justice CRESSWELL stated that in those circumstances he would follow the example of the Chief Justice. Mr. Justice WILLES was not so easily placated, saying, "I have not yet had an

opportunity of inspecting the learned gentleman's patent." LUSH promised that his curiosity would be gratified in the course of the day, and there the matter ended.

### Life Peerages.

It is not our intention to enter into the controversy concerning life peerages, which during the past few weeks has been productive of a number of interesting letters to *The Times*. Apart from questions of space, such would require a form of treatment unsuitable in columns devoted to matters of topical interest. It is thought, however, that readers whose pre-occupations do not lead them into academic problems of constitutional law may welcome a short reference to the Lord Chancellor's recent speech in the House of Lords in the course of the debate on LORD STRICKLAND's motion when attention was directed to the law in regard to life peerages and the Government was asked whether under the law as it stood steps might be taken that would enable Prime Ministers from the Dominions to sit and speak in the House of Lords. The Lord Chancellor, who returned a negative answer to this question, began by referring to his own position. A Lord Chancellor was not, it was intimated, necessarily a member of the House of Lords at all. He himself sat as Lord Chancellor when he was Sir DOUGLAS HOGG; and he very soon afterwards had the honour and privilege of becoming a member of their lordships' House. But the Lord Chancellor as such sat on the Woolsack; and the judges and the Attorney-General and the Solicitor-General, who were to-day summoned to attend their lordships' House, if they ever attended, would sit on the Woolsack so that they would be outside the House. When he addressed their lordships' House he moved into the House, as he had done that day, and spoke from that place, so that he was in his place in the House. In order to address the House in Committee he was only on the Government front bench, not by virtue of his position as Lord Chancellor, but by virtue of his position as a member of the House. If he were not a member of the House, the Lord Chancellor would have no right to sit and speak or to sit in Committee on the front bench or in any other part of the House. He had the honour to be permitted to address the House not because he was the Lord Chancellor, but simply and solely by virtue of the fact that he was a peer.

### The Wensleydale Peerage Case.

THE Lord Chancellor went on to express his conviction that the *Wensleydale Peerage Case* (1856), 5 H.L.C. 958, in which the House of Lords advised the Crown that a patent which gave no more than a right of peerage for life would not entitle the grantee to be summoned to Parliament, had been rightly decided. He went on to refer to the practice under the early kings of summoning a man to Parliament—quite frequently to sit in a single Parliament, sometimes, possibly, to sit for life. That, as the speaker thought, did not give him any hereditary right to sit at all; but, fortunately or unfortunately, by a much later invention of the Heralds, which afterwards had the imprimatur of LORD COKE, and was subsequently adopted by the Committee of Privileges, it was held that when a writ of summons was issued to a man, and he could prove that he sat after 1295 in Parliament, thereby there was necessarily created an hereditary dignity in himself and his heirs. It was thought that any of the kings who issued a writ at the time would be immensely astonished and would have somewhat resented the suggestion of anything of the kind. Reference was then made to the fourteenth century practice of creating peerages by patent and to the fact that from that time it had gradually become the law of the land that a peerage must always be created by patent, and not with any arbitrary descent, but only with descent to a man's heirs. LORD STRICKLAND's suggestion that it might be possible to create life peers by creating peerages with an impossible entail would, the Lord Chancellor believed, be contrary to the well-established theory of law as stated in the *Wills Peerage Case* (1869), L.R. 4 H.L. 126, and the *Buckhurst Peerage Case* (1876), 2 A.C. 1.

### The Law Lords.

THE matter was further elucidated by reference to the procedure adopted in regard to the Lords of Appeal in Ordinary. After the decision in the *Wensleydale Case*, the Lord Chancellor said, a Conservative Government took the same view as a Whig Government had formerly taken of the necessity of having legal assistance in the House, and they provided for the assistance—by what the speaker believed to have been the correct method—by introducing the Appellate Jurisdiction Act, 1876. Under that Act, readers will remember, the law lords hold office during good behaviour, but are removable on an address being presented by both Houses of Parliament. Their dignity is not inheritable, but so long as they hold office they are for all purposes peers of the realm and members of the House of Lords, capable of sitting, debating and voting as well when the House is acting in its legislative as in its judicial capacity. At the time of the Act they were regarded as life peers rather than official peers with a position not dissimilar to that of the bishops (see "Maitland's Constitutional History of England"). The fact that a law lord may continue to sit in the House of Lords after resignation of his office is due to the statutory provision to that effect contained in the Act of 1887, which was passed to meet the situation created by the resignation of LORD BLACKBURN a few years after the appointment of law lords by the Act of 1876. This provision was duly adverted to by the Lord Chancellor, who observed that from time to time there had been increases in the number of law lords created—and always by Act of Parliament. He would be a very bold man to-day who would say that the Crown could exercise a prerogative which had been denied eighty years ago in the *Wensleydale Case*, which had been denied by such a weight of authority as he had referred to, and which denial had been acquiesced in by Parliament ever since. That, the Lord Chancellor thought, was the real answer to the question. This conclusion, it should perhaps be explained, does not mean that the Crown is incapable of creating life peerages. The Lord Chancellor pointed out that

in the *Wensleydale Case*, not only LORD LYNDHURST, but every lawyer in the House except the then Lord Chancellor took the view that it was permissible to grant the patent of a life peerage to Sir JAMES PARKE, and that the majority of the House which supported this view was a very substantial one—something like ninety to fifty. In this connection we may quote the following from "Pike's Constitutional History of the House of Lords": "It was not denied that the Crown might confer upon the subject the title of baron for his life, but it was not admitted that the Crown could in this manner give him a place in the House of Lords."

### Ministerial Salaries.

SEVERAL points of outstanding interest, to which only the briefest allusion can be made here, are contained in the Bill embodying the Government scheme for the revision of ministerial salaries, the details of which were published last Wednesday week. Perhaps the most interesting of them is the statutory recognition accorded to the Cabinet and the leader of the opposition. The various offices are grouped into three categories carrying salaries of £5,000, £3,000 and £2,000 a year respectively, but it is provided that if any minister in the second or third category is included in the Cabinet his salary shall be £5,000 a year. The Bill abolishes the present distinction between the three paid and the two unpaid Junior Lords of the Treasury and makes provision for five Junior Lords of the Treasury at a salary of £1,000 a year each. A further recognition of existing practice appears in the provision that a salary (increased to £10,000 a year) shall be paid to "the person who is Prime Minister and First Lord of the Treasury." One other point should be noted at this stage. At present not more than six Secretaries of State and six Under-Secretaries of State may sit or vote in the House of Commons, and therefore two of the former and three of the latter must sit in the House of Lords. It is proposed to abolish the distinction existing for this purpose between Secretaries of State and other officers carrying cabinet rank and to enact that not more than fourteen of the seventeen ministers, whose offices as within the first group command a salary of £5,000 a year, and not more than twenty-one of the Parliamentary Under-Secretaries may sit and vote in the House of Commons. If all existing posts continue to be filled and the composition of the cabinet remains as at present the increased cost of the proposals will be £37,000 a year.

### Income Tax : Compromising Claims.

THE question whether the Commissioners of Inland Revenue have power to compromise income tax claims was again ventilated before BENNETT, J., recently, when the case which occasioned the learned judge's remarks, alluded to in our issue of 13th March last, came before him after a fortnight's adjournment. The Attorney-General, who appeared on behalf of the Commissioners, said that they had had entrusted to them under s. 57 of the Income Tax Act, 1918, the care and management of all duties of income tax, and they were empowered to do all such acts as might be deemed necessary and expedient for raising, collecting, receiving, and accounting for the taxes. Those words had always been construed as giving the Commissioners power in a proper case to accept a "sum down" if they thought it was in the ultimate interests of the revenue. Reference was made to similar powers under s. 1 of the Inland Revenue Regulation Act, 1890. The learned judge said the question was whether anybody, without the express authority of Parliament, could free a subject from the obligations of performing a duty laid upon him by an Act of Parliament. He had some recollection that the Bill of Rights, 1688, laid it down that the power of suspending laws or the execution of laws without consent of Parliament was illegal. The Attorney-General submitted that the Commissioners were carrying out their duties properly if they came to the conclusion that it was to the advantage of the Revenue that

they should come into a scheme which increased the likelihood of their getting something. It was of the greatest importance to the Commissioners that they should be able to compromise. The learned judge said it was of more importance to the subject whom he was there to protect, and in sanctioning a scheme in the case added that he was not deciding that the Commissioners had the power to compromise income tax claims. In his view they had not, but he was not deciding the point one way or the other.

### National Parks and Planning.

SOME interest attaches to the deputation from the Standing Committee on National Parks which was received recently at the Ministry of Health. The deputation, which included members of the Commons, Open Spaces and Footpaths Preservation Society, the National Trust and the Council for the Preservation of Rural England, was introduced by Mr. GEOFFREY MANDER, M.P. (of whose motion on national parks this informal meeting was the outcome) to Captain HUDSON, Parliamentary Secretary to the Minister of Health. The deputation based its arguments on recommendations contained in the Government Committee's report of 1931. Points considered in the course of the informal discussion were the difficulty experienced in ordinary planning schemes under present legislation of distinguishing between national park areas and normal rural areas, and the possible desirability of an *ad hoc* national park authority to co-ordinate the activities of planning authorities, statutory undertakings, and undertakings of other government departments not subject to planning restrictions. We draw readers' attention to the aforesaid proceedings, though considerations of space necessarily forbid anything like detailed treatment of the matter.

### The Inheritance Bill in Committee.

THE Inheritance (Family Provision) Bill, of which the main provisions have already been indicated in these columns (80 SOL. J. 953), survived the first day of its consideration by a Standing Committee of the House of Commons unaltered notwithstanding the large number of amendments put forward. These need not be indicated here, but it may be of interest to allude to the Solicitor-General's statement that the Bill would present many grave difficulties to the courts. It gave to the court, he said, a discretion which was very large, and he was sure the courts would be glad to have any guidance that the committee could put into the Bill. He did not think any real guidance would be afforded by a provision that in deciding any application under the Act the court should have regard to any statement made by the testator as to the reasons for the disposal of his estate by the will, and the committee allowed an amendment to this effect to be withdrawn on the understanding that another amendment dealing with the same subject will be discussed when the committee resumes its sittings after the Easter recess. There were thirty-three amendments put down to cl. 1 of the Bill, all of these being either negatived or withdrawn during the sitting of the committee on 23rd March.

### Recent Decisions.

IN *Beresford v. Royal Marine Insurance Co. Ltd.* (*The Times*, 23rd March), the Court of Appeal reversed a decision of SWIFT, J. (80 SOL. J. 596), and held that the administratrix of one who feloniously committed suicide could not recover moneys on policies of assurance taken out by the deceased on his own life. The case involved an application of the maxim *ex turpi causa non oritur actio*, and was not affected by the fact that the suicide was not within an express provision rendering the policies void if the assured should "die by his own hands, whether sane or insane," within one year from the commencement of the assurance. No order was made pending the hearing of a cross appeal by the respondent that the findings

of the jury, upon which the aforesaid decision rests, ought not to stand.

IN *Monaco v. Monaco* (*The Times*, 23rd March), LUXMOORE, J., granted the plaintiff, the reigning PRINCE OF MONACO, a declaration that he was the lawful guardian and was entitled to the custody of his grandson, PRINCE RAINIER, an infant, who is living within the jurisdiction of the court; an order that the defendant, the father of PRINCE RAINIER, was to deliver the infant to the plaintiff or to such person as the plaintiff should authorise to receive him; and an injunction restraining the defendant removing the infant out of the United Kingdom without the plaintiff's consent.

IN *Ritz Cleaners, Ltd. v. West Middlesex Assessment Committee* (*The Times*, 23rd March), the Court of Appeal reversed a decision of the Divisional Court, and held that an hereditament occupied by the respondents for cleaning, repairing and dyeing garments, brought to the premises by the public or collected by the respondents' vanmen, was not an industrial hereditament within the meaning of the Rating and Valuation (Apportionment) Act, 1928 (see s. 3 (i) and (4)), but a retail shop or business, with a factory ancillary thereto. In the room facing the street there was plant for cleaning and dyeing, in other rooms cleaning, pressing and packing were carried out. *Finn v. Kerslake* [1931] A.C. 485, was applied.

IN *The Stranna* (*The Times*, 23rd March), a claim by owners in respect of the loss of timber against the owners of a vessel, failed on the ground that the loss occurred in circumstances amounting to a peril of the sea, for which under the terms of the bill of lading the defendants were not liable. A contention that the loss was occasioned by a peril on the sea and not of the sea was negatived, LANGTON, J., holding that the loss was (in the words of LORD HERSHELL, in *Thames and Mersey Marine Insurance Co. v. Hamilton, Fraser and Co.*, 12 A.C. 484), "of a character to which a marine adventure was subject."

IN *Appenrodt v. Central Middlesex Assessment Committee* (*The Times*, 24th March), the Court of Appeal upheld a decision of the Divisional Court to the effect that annual payments in respect of the monopoly value of licensed premises attached to the granting of a licence by justices pursuant to s. 14 of the Licensing (Consolidation) Act, 1910, ought not to be taken into account as diminishing the rent which a hypothetical tenant would pay for the hereditament. The monopoly value was an element in the value on which the rent was paid and that value would be included in the rateable value, the rate being a rate on beneficial enjoyment from occupation. The same conclusion was reached on the footing that the case was to be regarded as depending on the proper deductions to be made from gross value as defined in s. 68 of the Rating and Valuation Act, 1925, payments under s. 14 (2) of the Licensing Act being payments which, under the hypothetical tenancy, fell on the landlord and did not affect the rent which the tenant had to pay. *Waddle v. Sunderland Union* [1908] 1 K.B. 642.

IN *Rex v. Fowler* (*The Times*, 24th March), the Court of Criminal Appeal affirmed a sentence of six months' imprisonment in the second division passed on the appellant for driving a motor car when under the influence of drink, but substituted for a disqualification for holding a driving licence for an indefinite period a period of five years, it being held that s. 15 (2) of the Road Traffic Act, 1930, did not empower the court to disqualify a convicted person for holding a licence for an indefinite period.

IN *Cooper v. Wilson* (*The Times*, 24th March), the Court of Appeal reversed a decision of SINGLETON, J., and held that a watch committee had no power at a meeting held five days after the expiration of a notice of resignation by the appellant, a police-sergeant, to decide that he was to be treated as discharged, and gave judgment for the appellant for £116 odd, representing his accumulated rateable deductions from pay, together with interest at the rate of 4 per cent. per annum from the date on which the notice of resignation operated.

## Criminal Law and Practice.

### THE MEANING OF MENACES.

THE Larceny Act, 1916, is as clear and accurate in its terminology as any Act of Parliament can be reasonably expected to be, but it is necessarily restricted by the limitations of language. A good example of this is to be seen in s. 30, under which "any person who with menaces or by force demands of any person anything capable of being stolen with intent to steal the same" is guilty of felony and is liable on conviction to penal servitude for any term not exceeding five years.

The word "menaces" does not appear at first sight to be a difficult word to construe. Even the Act, however, anticipates possible difficulties by providing in s. 29, sub-s. (4), that for the purposes of the Act it is immaterial whether any menaces or threats be of violence or injury, or accusation to be caused or made by the offender or by any other person.

On the 12th March, in *R. v. Lawrence and Wife*, at Birmingham Assizes, Mr. Justice Swift instructed the jury to return a verdict of not guilty of a charge of demanding money by menaces from Mr. X, with intent to steal, a case in which a jury at Nottingham Assizes had already failed to agree. The facts briefly were that Mr. X was a young married man with a well-paid occupation. The female defendant had been acquainted with him for twelve months and had visited him several times at his home in his wife's absence. On one of her visits she asked him for money and he gave her 7s. 6d. The male defendant, who was her husband, then appeared on the scene and said: "This would not look very well in a police court. Hadn't you better square the matter by paying me something." Mr. X then paid him £1 and arranged to pay him a further £1 later. On a second occasion a police officer was present at a conversation between the male defendant and Mr. X, when the former said: "It would be a serious thing for you if I went down town and talked. If you don't give me the money I am going to squeal."

Mr. Justice Swift in addressing prosecuting counsel asked: "What is wrong in his saying I am going to take you to the Divorce Court? Though everybody knows you cannot compromise divorce proceedings, everybody to-day knows that it is done daily. Was there more demanding money by menaces than if he had gone to his solicitor and said: 'I have caught my wife in the inner chamber in Mr. X's house. Bring divorce proceedings; but I am willing to settle if he pays me.' It is far from the ordinary blackmail case."

Every legal practitioner knows that a menace or threat of proceedings is often a useful and legitimate method of extorting money where it is legally due. This is obviously not blackmail, but there are border-line cases like *R. v. Lawrence* where the threatened proceedings cannot be compromised, as in criminal and divorce proceedings, or where the cause of action is extremely doubtful, or where the threat is of some other form of exposure for the protection of the trade interests of the persons employing the threat, as in the well-known case of *Hardie and Lane Ltd. v. Chilton* [1928] 2 K.B. 306, where the Court of Appeal disagreed with the conclusion reached by the Court of Criminal Appeal in *R. v. Denyer* [1926] 2 K.B. 258, on the same facts. Lord Hewart, C.J., said in the latter case that it was not true to say that, because a trade protection association had a legal right to put a person's name on a stop list it therefore had a legal right to demand money from him as the price for abstaining from putting his name on the stop list, as that was an excuse which might be offered by blackmailers to an indefinite extent. The Court of Appeal held in *Hardie and Lane Ltd. v. Chilton*, *supra*, that *R. v. Denyer*, *supra*, was wrongly decided, one of the grounds being that there was no evidence of any menace constituting a crime.

In this connection it is important to bear in mind the statement of Wills, J., in *Reg. v. Tomlinson* [1895] 1 Q.B. 706,

that the doctrine that the threat must be of a nature to operate on a man of reasonably sound and ordinary firm mind should receive a liberal construction in practice. This statement was subsequently approved by Lord Reading, C.J., in *Rex v. Boyle and Marchant* [1914] 3 K.B. 339, 344.

The whole question as to what constitutes menaces, with particular reference to the recent conflict between the Court of Appeal and the Court of Criminal Appeal is shortly to be considered by the House of Lords. It is a question bristling with difficulties, and at present the law is by no means as clear as it should be, having regard to its considerable implications in practice.

### VINEGAR AND THE FOOD AND DRUGS ACTS.

IN these days of substitutes it is becoming increasingly difficult for magistrates to decide whether a person has sold "to the prejudice of the purchaser any article of food or any drug which is not of the nature, or not of the substance, or not of the quality, of the article demanded by the purchaser" contrary to s. 2 (1) of the Food and Drugs (Adulteration) Act, 1928. Sir Rollo Graham-Campbell gave a considered judgment on a point arising out of this section at Bow Street Police Court on 18th March (*R. v. Tame*). The question was whether it was permissible to sell as vinegar a substance which was not malt vinegar and which was non-brewed. From the early part of the seventeenth century until 1890, said the learned magistrate, the commodity ordinarily sold in this country as vinegar was the product of fermentation, but at the latter date the liquid in question, which was unfermented acetic acid diluted with water, made its appearance. Although the fermented variety was made of similar ingredients fermentation produced a better aroma and flavour. Sir Rollo held that the liquid sold as vinegar was not of the nature and quality demanded, fined the defendant £5 and ordered him to pay 25 guineas costs. As police court practitioners know, the breach of this section is a technical offence, and very often no moral or criminal obliquity is imputed in any way. Indeed, *mens rea* is not an essential element in the offence at all (*Betts v. Armstead* (1888), 20 Q.B.D. 771. The question before the court in *R. v. Tame* as to whether an article was not of the nature or quality demanded owing to the lack of fermentation is by no means so common as that in which the difficulty is as to the standard of mixture, for instance, the amount of fat in margarine (*Roberts v. Leeming* (1905), 69 J.P. 417) or the amount of meat, malt or wine in an extract described as containing those ingredients (*Boucker v. Woodroffe* [1928] 1 K.B. 217). The standard is a matter for the court to determine (*Boucker v. Woodroffe*). It is interesting to note that it was successfully argued in the latter case that the term "wine" implied the presence of the fermented juice of the grape. The word "vinegar," as is well known, is derived from "vin aigre," or sour wine, and it would therefore appear that there is etymological as well as legal justification for the decision in *R. v. Tame*.

## Raising a Question of Law.

IN the case of *George Legge and Son Ltd. v. Wenlock Corporation* (1936), 80 SOL. J. 913, in which the Court of Appeal, reversing Crossman, J., gave a decision on 11th November last, an attempt has been made, so far successfully, to obtain a decision on a question of law, apart from the trial of the facts which were and are in issue. Before dealing with this case, it is convenient to deal in outline with the methods by which, under the practice of the Supreme Court, decisions on questions of law may be obtained apart from the trial of the facts.

Under Ord. 19, r. 27, the court or a judge may—

"At any stage of the proceedings, order to be struck out . . . any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to

prejudice, embarrass, or delay the fair trial of the action;

and, as matter will not be struck out which is relevant to an issue in the proceedings, a preliminary decision may be obtained under this order as to what is relevant, though not on the application of the party claiming that the allegations made by himself support a cause of action.

It is provided by Ord. 25, r. 4, that—

"The Court or a judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

There is, in addition, what Fry, L.J., described in *Willis v. Earl Beauchamp* (1886), 11 P.D. 59, at p. 65, as "the general jurisdiction of the Court to prevent the prosecution of frivolous and vexatious actions."

The court will only make an order under Ord. 25, r. 4, or under its inherent jurisdiction, in a clear or obvious case, per Lindley, M.R., in *Hubbuck v. Wilkinson* [1899] 1 Q.B. 86, at p. 91, and per Lord Selborne, L.C., in *Metropolitan Bank v. Pooley* (1885), 10 A.C. 210, at p. 214. It is submitted that the case must be equally clear before any matter will be struck out under Ord. 19, r. 27.

Where it is desired to obtain the decision of the court on a question of law, apart from the trial of the issue or issues of fact, and the question of law is one requiring serious consideration and argument, application should be made under Ord. 25, r. 2, or Ord. 34, rr. 1 to 3. Order 25, r. 1, abolishes demurrers, and in substitution therefore r. 2 provides—

"Any party shall be entitled to raise by his pleadings any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial."

The usual course is to have the points of law raised by the pleadings and the issues of fact tried together, a less usual course is first to obtain the findings of the tribunal, that is, the judge or jury, on the issues of fact and then to argue the questions of law based on such findings. The third course is to argue the point or points of law raised by the pleadings, before the issues of fact are tried and the findings known. This course is convenient if the facts are not in dispute and are, therefore, admitted on the pleadings. Where the facts are in dispute, a prior decision on a point of law may turn out to be academic and as the courts of this country are extremely loath to decide abstract questions of law, that is questions not raised by an actual state of facts, an order will probably be refused for a trial of a question of law, before disputed facts are tried. *Stephenson Blake v. Grant Legros and Cohen* (1916), 116 L.T. 268 C.A., in which case Lush, J., at p. 269, is reported to have said: "I only wish to add that I have had some experience—not very large, but some experience—in these endeavours to pick out propositions of law and get them tried first, and can only say that I can scarcely recollect a case in which in the end, such an attempt did not entail more expense and delay than if the action had been tried in the ordinary course" and in *Codling v. Moulem* [1914] 3 K.B. 1055, at p. 1063, Kennedy, L.J., spoke of "one more instance of the difficulty of trying to eliminate from a case everything except the law."

Order 34, r. 1, provides that "The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the court..." This creates no difficulty if the parties are agreed upon the facts especially if they are aware of this before action brought, cf. *Attorney-General v. Arts Theatre*

[1933] 1 K.B. 439 C.A. Rule 2 of the Order, however, does create a certain amount of difficulty. It provides that:—

"If it appears to the court or a judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such manner as the court or judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed."

Where the parties are agreed on the facts, either they can concur in stating a special case under r. 1, or the allegations in the pleadings will be admitted and a point of law raised under Ord. 25, r. 2, *supra*. When the parties are not agreed on the facts it is in theory open to the master to order under Ord. 34, r. 2, that they should raise a question of law by special case; but as a special case consists in a statement of facts, if, as is supposed, the parties cannot agree on the facts, such an order would be valueless. It is, therefore, not apparent how an occasion for ordering the parties to raise a question of law by special case could arise in practice.

The court or a judge can, however, under r. 2, order a question of law to be raised "in such manner as the court or judge may deem expedient." This gets over the difficulty of the parties agreeing on a special case. Further, under this rule it is not necessary, as it is under Ord. 25, r. 2, for the point of law to be raised on the pleading. It was for this latter reason no doubt, that in the case of *Legge v. Wenlock Corporation*, referred to above, the point of law was formulated under Ord. 34, r. 2.

The question in *Legge's Case* was whether a certain watercourse or culvert was, as the plaintiffs claimed, a sewer and therefore vested in the defendant corporation. In their reply, the plaintiffs pleaded that there had been a change from a natural stream to a sewer within the Public Health Act, 1875. As the defendants did not deliver a rejoinder there was no answer to this plea raised on the pleadings, except in so far as the plea consisted in allegations of fact which, under Ord. 27, r. 13, were in issue.

When the case had been opened for the plaintiffs in the court of first instance, the defendants' counsel said that he wished to raise a question of law which he submitted would, if answered in favour of the defendants, dispose of the case and avoid the necessity of calling evidence on either side. If, however, the question were answered in favour of the plaintiffs, the evidence would have to be called.

The point of law, which was formulated under Ord. 34, r. 2, was

"Whether the change of status from a natural stream to a sewer within the Public Health Act, 1875, as claimed in paragraph 5 (c) of the plaintiffs' reply to have taken place, was in law possible."

After an argument lasting several days, Crossman, J., delivered a reserved judgment in which he decided that such a change of status was in law possible. As an appeal from this decision was an interlocutory one, leave to appeal was necessary and was given by the learned judge to the defendants.

The Court of Appeal, as stated above, reversed the decision of Crossman, J., and held that the change of status from watercourse to sewer was not in law possible, and accordingly answered the question of law in the negative. Leave was given to appeal to the House of Lords. Accordingly, unless there is a successful appeal to the House of Lords, the parties will in this instance have had the point of law decided without the costly procedure of an investigation of fact.

The decision of the Court of Appeal will be of considerable interest to practitioners as the obtaining of a decision on an abstract point of law is often of great value to parties, especially large corporations.

## Company Law and Practice.

IN a previous article I have dealt with the special rights to dividend which may be attached to preference shares and I pointed out the importance of making clear whether a preference dividend was intended to be cumulative or non-cumulative. This week

### Preferential Rights in a Winding Up.

I propose to turn my attention to special preferential rights in a winding up and I may say at once that it is no less important in this context to indicate clearly what those rights are to be than it is with regard to a preference dividend. The investor in preference shares, besides inquiring into his rights as a member of a going concern, should be equally solicitous concerning his rights in the event of a liquidation. Nor should this latter be dispensed with on the ground that the company in question is a prosperous and sound concern, for quite apart from the notorious vagaries of fortune it may be put into voluntary liquidation at any moment in connection with some scheme for expansion or amalgamation. And on this happening the preference shareholders might discover to their surprise and disappointment that they were in exactly the same position as regards their capital as the ordinary shareholders.

There are two separate questions to be noted in this connection. The first is whether the preference shareholders are entitled to be repaid the whole of their share capital before the ordinary shareholders receive anything, or whether the two classes rank *pari passu* in this respect. The second question only arises where there are surplus assets in the hands of the liquidator after provision has been made for the expenses of the liquidator, the debts and liabilities of the company and the return to the members of the amounts paid up by them on their shares. How then, is this surplus to be dealt with? Have the preference shareholders' rights been exhausted by the return to them of their capital or are they further entitled to share in the surplus? Did they bargain away their rights to surplus assets in exchange for the right to have their capital returned to them in priority to the ordinary shareholders? I will deal with each question in turn.

First, then, as to repayment of capital. The important thing to bear in mind is that provisions in the articles regulating the distribution of dividends do not relate to or affect the rights of the different classes of shareholders in a liquidation. Preference shares may be and often are created without any preference as to capital. The general rule is that in the absence of any special provisions specifically dealing with rights as to capital all the members of the company rank *pari passu* for the return of their capital in a winding up according to the amounts respectively paid up by them on their holdings whether of preference or of ordinary shares. This rule cannot be displaced by pointing to irregularity of rights as to dividend, for any such irregularity results from a contract which has no bearing on the question of return of capital. A contract giving preferential rights in a winding up to the holders of shares which also confer a preference as to dividend is very commonly found in the articles of a company and in such a case the ordinary shareholders will receive nothing until the preference shareholders have been repaid in full. Moreover, in some cases the ordinary shareholders are still further postponed where there are arrears of preference dividend owing to the preference shareholders. This, however, is rare. In ninety-nine cases out of a hundred the members of a company are not entitled to a dividend until it has been declared and passed, and in such cases in a liquidation neither the liquidator nor the court will assume the dual function of the directors and the company in general meeting by declaring and passing a dividend. Even if there have been profits out of which a dividend could properly have been paid, these will not be

available to satisfy arrears of a preference dividend after the commencement of a winding up. But there are also cases where the regulations of the company are so drawn that the profits belong to the shareholders without the necessity of declaring a dividend. If this is so, then arrears of preference dividend must be satisfied before any return is made to the ordinary shareholders in respect of the amounts paid up by them on their ordinary shares. There is ample authority for these propositions, but I will only refer to two cases. *In re Crichton's Oil Company* [1901] 2 Ch. 184; [1902] 2 Ch. 86, is a decision of the Court of Appeal that no arrears of a preference dividend are payable by the liquidator in a winding up. Collins, M.R., says this: "The right of the preference shareholders [to dividends] would have been subject to the discretion of the directors as to the application of the fund."

Can this circumstance, that the directors have had no opportunity of exercising their discretion, give the preference shareholders an absolute right to that to which they might not, and probably would not, have got if the directors had exercised their discretion? I think it cannot. In my opinion, the presumption is that the directors would not have applied this sum in paying a dividend to the preference shareholders. But it is not necessary to go so far as that. The onus is upon the preference shareholders to show that this sum is available for dividend, and this they have not done and cannot now do. Upon the construction of the memorandum and articles I think that their claim fails. . . . The last words ultimately contain the core of the matter. The question is always one of construction and, as I have already said, there may be cases where on the true construction of the company's memorandum and articles the preference shareholders will have a preferential right even to payment of arrears of dividend. A number of cases where this has been held are collected in "Buckley" (11th ed.), p. 449, note (2), and there is also a more recent case which I cite as a good illustration: *In re Walter Symons Ltd.* [1934] Ch. 308. There the preference shareholders had "the right to a fixed cumulative preferential dividend at the rate of 6 per cent. per annum" and a further right to participate in profits after payment of a 10 per cent. dividend on the ordinary shares. It was further provided by the articles that the preference shares "shall rank both as regards dividends and capital in priority to the ordinary shares but shall not confer the right to any further participation in profits or assets." There were also other clauses relating to dividends in more or less common form. Maugham, J. (as he then was), had to construe the words which I have last quoted, and he concluded, though not without hesitation, that they related solely to a winding up and that their true meaning was that the preference shares should in a winding up rank in priority to the ordinary shares both as regards dividends and capital, dividends here meaning arrears of fixed cumulative preferential dividend. In the opinion of the learned judge the draftsman of the articles "was regarding a right to that dividend as existing notwithstanding the winding up, and he is here stating that both as regards the arrears of fixed cumulative preferential dividend and as regards capital the preference shareholder is entitled to priority over the ordinary shareholders." Each case, therefore, has to be construed as and when it arises since the problem is one of the construction of "the infinite number of combinations and permutations that company draftsmen are capable of using."

The second of the two questions which I raised at the beginning of this article concerns the distribution of surplus assets in a winding up. A liquidator may sometimes find that after paying all the expenses of the liquidation and the liabilities of the company, and after returning their capital to the members, he still has funds in his hands. These funds belong to the members, but questions may arise as to the correct method of distribution. *Prima facie* all the members are equally entitled to share in proportion to the nominal value

of the shares held by them in the capital of the company, and this is so, whether or not different classes had different rights to dividend, while the company was a going concern. The question was before the House of Lords in the case of *Birch v. Cropper*, 14 A.C. 525. Dismissing the contention put forward on behalf of the ordinary shareholders that all surplus assets belonged to them, Lord Henshell said: "The argument [of the ordinary shareholders] appears to assume that the preference shareholders are not entitled to any share of the profits of the company. I do not think this is the case. What they are to receive is indeed limited in its amount, but it is none the less a share in the profits. To treat them as partners receiving only interest on their capital and not entitled to participate in the profits of the concern, or to regard them as mere creditors whose only claim is discharged when they have received back their loan, appears to me to be out of the question. They are members of the company, and as much shareholders in it as the ordinary shareholders are..."

Lord Macnaghten endorses this view and points out that, if the ordinary shareholders are right and the preference shareholders are entitled to nothing more than the return of their capital, with interest, to the day of payment, then these latter are being treated as though they were debenture holders. "But they are not debenture holders at all. For some reason or other, the company invited them to come in as shareholders, and they must be treated as having all the rights of shareholders, except so far as they renounced those rights on their admission to the company. There was an express bargain made as to their rights in respect of profits arising from the business of the company. But there was no bargain—no provision of any sort—affecting their rights as shareholders in the capital of the company." See also *Griffith v. Paget*, 6 Ch. D. 511, and *In re Driffield Gas Light Company*, [1898] 1 Ch. 451. The most recent case in the reports, so far as I am aware, is *In re William Metcalfe and Son Limited* [1933] Ch. 142, which contains valuable reviews of the law, and of the authorities by Eve, J., in the court of first instance, and by the late Lord Hanworth, M.R., on appeal to the Court of Appeal. Once again the result is, as in the case of dividends, that the preference shareholders get the benefit of omissions and ambiguities on the grounds that they are members of the company having equal rights with all other members, and that the conferring of special privileges in one respect cannot be construed as an intention to cut down their rights in another respect. The ordinary shareholder who seeks to show that the preference shareholders are in any way in a worse position than himself must produce a specific bargain to that effect.

## A Conveyancer's Diary.

[CONTRIBUTED.]

THE law relating to the power of appointing guardians for infant children has undergone considerable modification in the last fifty or sixty years, and would now seem to have reached a point where it affords little scope for further development. There appears, however, to be some slight misapprehension as to the position in the public mind, if we may judge from a case which was recently brought to my notice. In that case a lady, who had a husband living and some children, wished her will to be so drawn as to oust the husband after her death from all control and care of the children. There was no question of a separation, or anything of the sort; they had merely a perfectly friendly agreement to differ about questions of upbringing and education. I can only suppose that the lady had heard in some vague way that the rights of the sexes were now equal under the Guardianship of Infants Act, 1925, and that this was her idea of equality in practice.

Now it is perfectly true that the preamble to that Act refers to the Sex Disqualification (Removal) Act, 1919, and the establishment thereby of equality in law between the sexes, and states that it is expedient that this "principle should obtain with respect to the guardianship of infants and the rights and responsibilities conferred thereby." What sort of an equality this is to be is amply shown by the terms of s. 1, which are as follows: "Where in any proceeding before any court . . . the custody or upbringing of an infant, or the administration of property belonging to or held in trust for an infant or the application of the income thereof, is in question, the court, in deciding the question, shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing or application, is superior to that of the mother or the claim of the mother is superior to that of the father." The equality, then, is an equality in promoting the interests of the infant: it is really an equality of responsibilities rather than of rights.

After the death of one or more of the parents the principle is the same. Either parent may appoint guardians by deed or will: s. 5 (1) and (2). In normal cases, of course, both should appoint the same persons. When both parents are dead the respective appointees of both of them are to be joint guardians: s. 5 (5).

During the life of the surviving parent the position is more complicated. *Prima facie*, the surviving parent is sole guardian. But if the deceased parent has appointed guardians, those guardians are to act jointly with the surviving parent. Further, if the deceased parent has omitted to appoint guardians, the court has a discretion to do so, and the appointees of the court are in the same position as if they had been appointed by the deceased parent: s. 4 (1) and (2). After the death of both parents, the appointees of the court act jointly with the appointees (if any) of the surviving parent: s. 5 (6). There do not appear to have been any reported decisions on the question of such appointments by the court, but it is rather difficult to believe that the court will lightly impose additional guardians upon the surviving parent if the deceased parent has not thought it necessary to do so, and the conduct of the surviving parent is not open to exception. In normal cases, though each parent should appoint guardians, the appointments should only be limited to take effect after the death of the surviving parent, who should be explicitly appointed sole guardian for life. On the other hand, if the deceased parent has appointed guardians and those guardians are themselves dead or refuse to act, the court has power by the same sub-sections to appoint other guardians to act jointly with the surviving parent. In this case it would seem most probable that the court would exercise its powers: for the deceased parent has clearly indicated by the appointment of guardians that he or she does not wish the surviving parent to have unfettered control of the infants, and this wish must be treated with respect.

Once it is established that a surviving parent and other persons are to be the guardians of the infant, their position *inter se* is regulated by s. 5 of the Act. The appointee and the surviving parent are to act jointly unless the surviving parent "objects" to such an arrangement. The appointee has the right to apply to the court both in the event of the surviving parent "objecting" and also if he thinks that the surviving parent is unfit to have the custody of the infant. Once the matter is before the court, the court's decision is governed by the paramount consideration of the welfare of the infant, as prescribed by s. 1. On such an application the court may take any of three courses. It may decline to make any order, and the statute provides that the effect of that is to be that the surviving parent remains sole guardian. It is to be noticed, however, that this provision applies whether

the appointee's application arises out of the "objection" of the surviving parent or out of his own view of the parent's unfitness. An appointee who is unduly precipitate in invoking the court under this provision can, therefore, be deprived of his guardianship even if the surviving parent has not "objected." Secondly, the court may order that the surviving parent is to act jointly with the appointee. It does not seem very probable that the court will often make this form of order, for the joint régime would hardly be harmonious after matters had been brought to the pitch of such an application to the court, and it can be seldom that such lack of harmony conduces to the welfare of the infant. Thirdly, the court may order that the appointee shall be sole guardian of the infant: that is to say, the surviving parent will be removed. Here also it is to be noticed that such an order may be made, not only where the appointee applies to the court because he thinks that the surviving parent is unfit, but also where the application arises out of the "objection" of the surviving parent. A surviving parent should, therefore, beware of a precipitate "objection."

What an "objection" consists in does not seem to be made very clear in the Act. But it must, I think, be a formal, or more or less formal, signification of the surviving parent's view. For under s. 5 (3), the appointee is to act jointly with the surviving parent unless the surviving parent objects. The objection thus determines the office of the appointee (though it may be revived by the order of the court, as we have seen), and can, therefore, not be a mere statement of a transient irritation.

Finally, where two or more persons are joint guardians, the court may on the application of any of them resolve any disputes they may have on matters "affecting the welfare of the infant" (s. 6). Such an application would appear to be something much less drastic than one under s. 5, and it is submitted that s. 6 should be normally resorted to, unless matters have come to a very serious impasse.

## Landlord and Tenant Notebook.

WHEN a lease is negotiated, the parties may know what the rates on the property are, but cannot know what they will become; and foreknowledge might make a vital difference to the outcome of the negotiations. When thought is given to this factor, it may be very easy to come to some arrangement by which the party who is not to pay the rates agrees eventually to contribute towards any increase which may be payable. It would at first sight also seem very easy to give effective expression to such an agreement; but the authorities show that regard should be had to certain pitfalls.

Attempts to share risks of this kind are not new. Leases containing provisions designed to have the desired effect came under discussion in *Graham v. Wade* (1812), 16 Ea. 29, and in *Watson v. Atkins* (1820), 3 B & Ald. 647, and in each case the instrument was judicially characterised as obscure. In *Graham v. Wade*, the whole of a certain building was rated, the amount of rates payable being £60 at the time when the defendant negotiated for a lease of part of the building, on which the rates payable would be £20. The landlord, the plaintiff in the action (which was for rent) granted him the lease at an agreed figure "all taxes *thereon* being to him allowed," but the defendant undertook to pay and discharge "all such further or additional rates and taxes as may be assessed or imposed upon the said demised premises or on any additional buildings or improvements." The landlord then covenanted to pay all rates, etc., in respect of the yearly rent of £80, save such further or additional taxes or assessments, etc. During the term the amount payable in rates increased, and the question at issue in the case was whether

the expression "further or additional" applied. Lord Ellenborough, C.J., came to the conclusion that the wording of the lease pointed to an intention to limit the landlord's liability to an *ad valorem* rate on £80, and Bayley, J., agreed that "further or additional" meant further or additional to the existing amount. No attempt was made to distinguish between the two adjectives, or it might have been suggested that "further" indicated new kinds of impositions, "additional" increases in the same kind.

In *Watson v. Atkins*, a tenant was plaintiff, his landlord defendant. The demised premises were again part of larger premises, and were not separately assessed. The rateable value of the whole was £35. The defendant was under covenant to pay all *such* taxes, charges, rates, etc., as were imposed; the plaintiff to pay all *fresh* taxes, charges, rates, etc., imposed. During the term the predecessor in title of the plaintiff effected improvements to the property let. In consequence the authorities rated that part separately and it was assessed at £35. The question was whether rates imposed accordingly were "fresh." It was held that they were, the connotation of the term not being limited to such events as a new window-tax; it was intended that the landlord should pay only as long as there was only one assessment for the whole building.

The lesson of such authorities is that the instrument should express clearly whether the arrangement is to operate only in the event of an increase in what is now the general rate or is also to apply to, say, water rates; also whether it is to have effect and what effect when non-periodic outgoings are incurred, such as drainage expenses. While, if it applies only to increases in rates, care should be taken to express whether an increase in the rate levied and a net increase brought about only by an increased assessment are to modify the parties' rights. It may be recalled that *Steel v. Mahoney* (1918), 34 T.L.R. 327, decided, in the landlord's favour, the question whether the statutory increase permitted by the Increase of Rent, etc., Act, could be imposed when the amount payable was increased owing to a new assessment.

The question of premises not separately assessed becoming a separate hereditament may also have to be taken into consideration; that the danger exists was a point dealt with in the "Notebook" in Vol. 79, p. 177.

Coming to modern decisions, another point of construction was the decisive factor in *Sowerby v. Lindsay* (1928), 44 T.L.R. 714, C.A. In this case the ratepayer tenant had bargained that he was to be entitled to recover from the landlord the amount in excess of a specified figure which he paid, in rates, in any one year of the tenancy. It had not occurred to anyone—or at least it had not occurred to the landlord—that rating years did not correspond with years of the tenancy. Consequently, the tenant was able to add up three payments which he made and claim the excess of the total over the specified figure. This would have been impossible if the covenant had used the word "payable" instead of the word "paid."

Another covenant which did not express what both parties may have had in mind gave rise to the case of *W. H. Read & Co. Ltd. v. Walter* (1931), 48 T.L.R. 15. Here a tenant undertook to pay to her landlord or cause to be paid the land tax sewers rate and all other rates, taxes, duties, charges, assessments, outgoings, etc., charged upon or in respect of the premises. The lease referred in various places to a superior lease, so there could be no doubt that the original grantee had notice of the existence of a superior landlord. The assignee (who took after her death) would also have had such notice, but may not have been actually aware that by the head lease the superior landlord undertook to pay the rates on the property. At all events, this accounted for her grievance which led to the litigation. The "cause to be paid" which followed the words "to the landlord" was made much of in argument, for rates are normally paid to the rating authority, and it

was contended that the effect was that the covenant imposed no liability until rates were demanded from the covenantee. Also, that rates could be paid to a rating authority only. These propositions were not accepted, the covenant being construed as an undertaking to pay to the landlord or cause to be paid to the landlord the amount of the rates; but here, again, if a result of this kind is to be achieved without trouble, more explicit wording is desirable.

## Our County Court Letter.

### THE DISMISSAL OF FOREMEN.

In a recent case at Worcester County Court (*Horrocks v. Worcester Windshields and Casements Ltd.*) the claim was for £41 as damages for breach of contract. The plaintiff's case was that, in August, 1936, he had been engaged as plating shop foreman at £6 a week, terminable on three months' notice. The plaintiff was dismissed, however, in November, without notice, and he therefore claimed £72 (three months' salary), less £31 subsequently earned. There had been no wilful disobedience, grave moral misconduct, or negligence in business or conduct. The only remaining ground for summary dismissal was incompetence, or permanent disability or illness, which had not existed, as it was not sufficient that the plaintiff had not managed as well as expected, or that the results were disappointing. The defendants contended that the plaintiff failed to show the requisite skill, disobeyed orders and performed his duties negligently. Owing to the rejections in various departments, much work had to be done over again, thus causing overtime, and the loss in the plating shop and finishing shop varied from £9 to £21 a week. The plaintiff's case was that he had reason to complain about the work in the polishing shop, from which the parts came to his department. Having been complimented on his work, he was surprised to be dismissed. His Honour Judge Roope Reeve, K.C., held that the defendants required a man of high attainments, but the plaintiff was incompetent to perform the duties required of him. No complaint had been made about his work, and the plaintiff had not been very well treated. Nevertheless, there was no wrongful dismissal, and judgment was given for the defendants, with costs.

### EJECTMENT AFTER CLEARANCE ORDER.

In a recent case at Taunton County Court (*Taunton Corporation v. Hartnell*), an application was made for possession of a dwelling-house, stores and yard. A claim was also made for £26 14s., as arrears of rent, and £26 5s. as mesne profits from the 21st March, 1936, to the 9th January, 1937. The case for the applicants was that they purchased the property in 1924, when the defendant was paying 12s. 6d. a week rent. The house was one of several included in a clearance order, as unfit for habitation, but the Ministry of Health had not confirmed the order, with regard to the house in question, as it belonged to the Corporation and they could make other use of it. Possession was required, however, in order to clear the site. The notice to quit had expired on Saturday, the 21st March, 1936, but the defendant was still in occupation. The defendant's case was that his tenancy was weekly, terminable on a Monday, viz., the day rent was due, as shown by the rent books. The notice to quit was therefore bad, as it had not expired on a Monday. The premises were important to the defendant (a haulier) who admitted the arrears and had offered to pay them to date. It was submitted that there was no real reason for the applicants to have possession, and they could not in law say that they wanted the house to pull it down. This would be pleading their own default, as they had owned the house for twelve years, before the notice to quit, and had themselves allowed it to get into such disrepair as to be unfit for human habitation.

It was contended for the applicants that the tenancy was from Saturday to Saturday, and Monday was merely the day upon which rent was payable. As regards the state of repair, the house was in much the same state when purchased, and it was bought for the purpose of being pulled down. His Honour Judge Wethered held that the notice to quit was bad. The claim for possession therefore failed, but judgment was given (without costs) for the arrears of rent, and for the further arrears claimed as mesne profits, for which an amendment was allowed, viz., as a claim for rent.

### OBSTRUCTION TO FORESHORE.

In a recent case at Lancaster County Court (*Jackson v. Morecambe Corporation*), the claim was for £90, as damages for breach of contract and trespass to goods. The plaintiff's case was that, being the holder of a licence for a telescope pitch on the foreshore at Bare, he had bought a boat which had been on the foreshore for two or three years. His intention was to use this boat as a shelter, but the defendants revoked his licence, and ordered him to remove the boat. On his failure to do so, the defendants' employees removed the boat, causing unnecessary damage in so doing. The plaintiff therefore claimed £9 for nine weeks as breach of contract, and £8 as damage to goods. His case was that, as the tidal water came to the foreshore, the structure came within the definition of a boat, and as such was entitled to remain, not being an obstruction. It was submitted on the defendants' behalf that the structure was beyond the limits of the foreshore, and was on their freehold. There was therefore no case to answer. This submission was upheld by His Honour Judge Peel, K.C., who was satisfied that the boat was an obstruction, and that no unnecessary force was used in its removal. The claim was therefore dismissed, with costs. A counter-claim for £58 19s. 9d., in respect of unpaid rates on a house in Parliament Street, was withdrawn.

## Obituary.

### SIR SAMUEL MORRIS.

Sir Samuel Meeson Morris, retired solicitor, of Shrewsbury, died on Thursday, 25th March, at the age of eighty. He was educated at Shrewsbury School, and was admitted a solicitor in 1879. He practised at Shrewsbury, where he was a partner in the firm of Messrs. Sprott & Morris. Elected to the Shrewsbury Town Council in 1885, he was mayor four times. In 1920 he received the honour of knighthood. He retired some years ago, but retained until his death the position of Clerk to the Condover Bench.

### MR. E. R. BARKER.

Mr. E. Richard Barker, solicitor, of Sutton, Surrey, died at St. George's Hospital, London, on Thursday, 25th March. Mr. Barker, who was admitted a solicitor in 1935, had been with Messrs. W. H. Matthews & Co., solicitors, of Sutton, for forty years.

### MR. L. NEVILL.

Mr. Leonard Nevill, solicitor, senior member of the firm of Messrs. Sewell, Edwards & Nevill, of Bucklersbury, E.C., died at Hornsey, on Wednesday, 24th March, in his seventy-fifth year. Mr. Nevill was admitted a solicitor in 1883.

## Rules and Orders.

THE HOUSING ACT, 1936 (OPERATION OF OVERCROWDING PROVISIONS) ORDER, 1937, DATED MARCH 20, 1937, MADE BY THE MINISTER OF HEALTH UNDER THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. c. 51). [S.R. & O., 1937. No. 216. 1d. net].

## POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

### Bastardy Proceedings in Scotland.

**Q. 3419.** A client of ours, a Scotsman domiciled in England, is threatened with affiliation proceedings in respect of a child born in Scotland of which he admits he is the father. The child is now two years old. Our client has often offered to marry the mother of the child, and is still willing to do so, but she now definitely refuses to marry him. He has voluntarily paid her certain sums from time to time for the support of the child. He has not made any payment now for some considerable time, and he does not feel disposed to pay any more in view of the mother's refusal to marry him, and let him provide a home for her and the child. The mother is domiciled in Scotland. We feel that if the mother were domiciled in England our client would have no defence to a claim for alimony, but we should be glad to have your opinion as to whether, if the mother takes proceedings in Scotland, a judgment for "alimony" can be enforced in this country.

**A.** As the questioners' client is not within the jurisdiction of the Scottish court, s. 6 of the Summary Jurisdiction (Process) Act, 1881, does not apply. The Sheriff court therefore has no jurisdiction to make the order unless the putative father is within the jurisdiction (i.e. present in Scotland) at the time of making the order. By remaining in England the client will therefore be exempt from liability.

### Enlargement of Railway Culvert.

**Q. 3420.** A is the owner of freehold land abutting upon a ditch. The railway company are the owners of the land and permanent way on the other side of the ditch. Opposite A's land the water from the ditch passes through a culvert under the railway and eventually discharges into the river. The whole of the sewage for the neighbourhood, involving some 500 or more houses, has passed down this ditch and through the culvert for many years, and the ditch has been cleaned out and repaired by the local authority. The railway company object to A leading the sewer into the ditch on the grounds that the culvert is not large enough to take the additional fluid. It is apprehended that the ditch is a public sewer and that A as adjoining landowner has the right to discharge therein, but on the other hand the railway company's contention would appear to be well founded inasmuch as they might be involved in the substitution of a much larger culvert to take the additional fluid at their own expense. Can, in your opinion, the council be compelled to provide an adequate sewer, either by providing a pipe instead of the ditch or by combining with the railway company to enlarge the culvert? Also, is it possible that A can be effectively prevented either by the council or the railway company from entering the ditch?

**A.** A can only connect his sewer with the ditch in accordance with the Public Health Act, 1875, s. 21, which provides that the connection must be made only on notice and under the superintendence of the local authority's officers. If the Public Health Act, 1925, s. 38, has been adopted, A may first have to pay the cost of connection to the local authority. If that section has not been adopted, A will still have to pay the cost, under the Public Health Acts Amendment Act, 1892, s. 18. Both A and the local authority, however, will have difficulty in requiring the railway company to enlarge the culvert, in view of *Wood v. Ealing Tenants' Limited* [1907] 2 K.B. 390. See also *Grant v. Derwent* [1928] Ch. 902, and [1929] 1 Ch. 390.

The council can be compelled to provide an adequate sewer as a failure to do so would be a breach of their statutory duty. A, however, can be prevented from entering the ditch, as his right of connection with a sewer can only be exercised in accordance with the above sections. The result may be that the local authority will have to provide a separate sewerage scheme, not utilising the ditch or culvert at present in use.

### Annuity—SETTING ASIDE FUNDS—INCOME TAX.

**Q. 3421.** A testator by his will gave an annuity of £30 per annum to A. The trustees set aside an investment of £1,000 bearing interest at 3 per cent., income tax being deducted at the source. Should the trustees pay over to A the full amount of the income they receive or are they under an obligation to deduct income tax from the annuity? In the latter event how can it be justified that income tax has been deducted twice and how do the trustees apply the moneys they have deducted? In either case, if A is not liable to income tax or to the full rate, should the trustees give A a certificate that income tax has been deducted?

**A.** Unless the annuity was given free of tax, income tax must be deducted, and the trustees will give A the usual certificate. If tax is deducted at the source the trustees will not deduct it again but will pay the net sum as received, and the ordinary form of certificate will cover this. Alternatively, the trustees can lodge the ordinary request that the interest or dividend on the stock be paid direct to A, or a request to their bankers to credit it to A, in which case A will probably be able to recover tax without any separate certificates from the trustees. It should be noted that, unless A consented to the appropriation (A. of E. Act, 1925, s. 41 (9)), or there was power given in the will, the trustees are not entirely discharged from liability to provide the annuity by appropriation of a fund the income of which is sufficient at the time of appropriation to answer the annuity. As it is only at 3 per cent. security they will probably be secure, but the point should be borne in mind.

### Custodian Trustee.

**Q. 3422.** We act for a private non-profit company which is authorised to act as a trust corporation in relation to charitable and ecclesiastical trusts. If appointed custodian trustee:—

(1) Can this company raise money on mortgage of the trust (real or leasehold) for the purposes of the trust?

(2) Should the managing trustees join in the deed to direct the custodian trustee or concur in the mortgage?

**A.** Assuming the corporation comes within the category of those mentioned in r. 30 of the Public Trustee (Custodian Trustee) Rules, 1926, it may be appointed custodian trustee. In that case, under s. 4 of the Public Trustee Act, 1906, the property of the charity must be vested in it. It has not power to raise money but must concur (by means of demise or legal charge and to give receipt for the money) in doing so at the request of the managing trustee, but in such way as not to impose any legal obligation on it, and only provided it is satisfied no breach of trust is being committed. It should in such a matter be separately advised, and if advised that the managing trustees have power to raise the money, including the obtaining of any necessary consents (such as that of the Charity Commissioners or Board of Education), it will not incur any legal liability (s. 4 (2) (h)) for negligence.

## To-day and Yesterday.

### LEGAL CALENDAR.

29 MARCH.—About a century ago, the ease with which arsenic could be bought across any chemist's counter with an astonishing disregard of formality caused a whole series of arsenic murders. William Barnett was one of those who availed himself of this facility to procure the necessary means to rid himself of his wife, having finally decided that he preferred her sister. After a week's illness, she died in great agony. Her husband escaped detection for six months, but was finally tried at the Leicester Assizes on the 29th March, 1822, and found guilty.

30 MARCH.—The eternal unrest of Ireland is reflected in the trial of Patrick Lynch and two other men at Cork on the 30th March, 1830, for their share in the Doneraile conspiracy, a plot to murder in an ambush three country gentlemen who had incurred the unpopularity of the peasantry. A large gang had bound themselves by a secret oath to commit the crime, and, in the course of the trial, a graphic account of the scene was given by Daniel Sheehan, a quibbling informer, who had been one of the conspirators. Lynch alone was convicted and sentenced to death.

31 MARCH.—Pitiable private misery was the core of the case of Jane Taylor, a girl of twenty-one, tried at the Warwick Assizes on the 31st March, 1847, for the murder of her illegitimate baby. Soon after being turned out by her family, she had been found in a canal and rescued by a labourer, with her dead child in her arms. The jury took a merciful view and acquitted her, and the High Sheriff and the members of the Bar subscribed a considerable sum for her benefit. Her rescuer was awarded £5 by Mr. Justice Patteson and each of the jury contributed 2s. 6d. for him.

1 APRIL.—Edward Burnworth displayed the effrontery of a desperado when he appeared at the Old Bailey on the 1st April, 1726, charged with murder committed in the execution of a robbery. He refused to plead until a watch, a hat, a wig and other objects taken from him on his arrest were restored. The court had a method of dealing with him and he was ordered to be pressed to death. For over an hour he endured a pressure of more than three hundredweight. Then at last he consented to plead, was taken back to court, tried, convicted and sentenced to be hanged.

2 APRIL.—Perhaps the artistic temperament lay behind the crime of Theodore Gardelle, a Swiss painter, lodging in Leicester Square, who killed and cut up his landlady. She was "a gay showy woman of doubtful character who dressed fashionably and was chiefly visited by gentlemen," and they had quarrelled over some derogatory remarks she had made about a portrait of her that he was painting. The climax was that he gave her an unintentionally hard push, and in falling she hurt her head severely. In a panic he killed her. He managed to conceal the crime for a week, setting himself to dispose of the body piecemeal, but in the end a charwoman discovered some bloody sheets and the sequel was that Gardelle was tried and sentenced to death at the Old Bailey on the 2nd April, 1761.

3 APRIL.—Sheer ruffianism brought two boys of nineteen into the dock at the Taunton Assizes on the 3rd April, 1835, on a charge of murdering their employer. Together they had waylaid him on his way home, and John Hoare, the more desperate of the two, had stopped his cart with the greeting: "Master, I am come to meet you," following up his words with a blow from an iron bar. He continued to beat him on the head till William Howe, his companion, could bear the sight no more. Then they robbed the body and threw the weapon in a pond. They were both hanged.

4 APRIL.—Lord Chief Justice Kenyon died on the 4th April, 1802, having held his office for almost fourteen years.

### THE WEEK'S PERSONALITY.

Lord Chief Justice Kenyon was one of those legal luminaries who first shone in an attorney's office. He made his earliest acquaintance with the law as an articled clerk to Mr. Tompkinson, of Nantwich, showing such extraordinary diligence and assiduity that he was almost taken into partnership. Fortunately for him, however, a hitch arose and he took the risk of going to the Bar instead, though with the narrowest of means. The rigid economy that he was obliged to practice in the long years of waiting for success left a permanent mark upon him, and in the days of his prosperity he was proud of pointing out the little eating-house in Chancery Lane where he had formerly dined for 7½d. His ingrained frugality made him an easy butt for his enemies. It was said that he used to go to bed with the sun to save candles. People laughed at the method by which he alternately used only two hats and two wigs, wearing an old, shabby hat with a relatively decent wig and *vice versa*. Nevertheless, the story is told of a gentleman who noticed in a fishmonger's near Lincoln's Inn Fields two orders. The first read: "Lord Loughborough: Two turbot, six hen lobsters, four dozen smelts, one hundred prawns." The second read: "Lord Kenyon: One haddock." He commented on the difference, but the shopkeeper said: "It would puzzle the best lawyer among you to tell me which will prove the best customer."

### REVERENCE FOR THE RED JUDGE.

At the dinner of the Pattenmakers' Company in Vintners' Hall recently, Mr. Justice Atkinson, replying to the toast of "The Visitors," said that no judge could travel the country on circuit without seeing the tremendous respect that the people had for the judges in their official capacity. It is a pity that this reverence is now shorn of some of its ceremonial splendour, as in the matter of the judge's arrival, when the High Sheriff in his uniform, the chaplain in his robes, and the escort of javelin men used to give him an almost royal reception. There was once an amusing scene at Doncaster when the assembled officials, selecting the most distinguished looking individual they could see alighting from the train, received him with elaborate homage, while the judge, Mr. Justice Vaughan Williams, his daughter and a bull-terrier alighted unpretentiously from another carriage. When a breathless servant informed the Sheriff of his mistake, he hastened to his lordship with all the dignity he could muster, but the immediate repetition of the civilities wasted on a stranger was not a success.

### CIRCUIT ANTI-CLIMAX.

The eagerness with which the Red Judge is awaited in the assize towns once gave rise to a comic incident at Bodmin. As it is not on the main line, it is usual for the High Sheriff to meet the judge with his car at the most convenient station 4 miles away. On one occasion, the weather was so fine that Mr. Justice Avory announced that he preferred to walk, and accordingly set off with his marshal and the High Sheriff. The judge's cook, however, was anxious to reach his lodgings to start preparing dinner, and obtained permission to ride back in the empty car. But no one remembered the excitement caused in the little town by the expectation of the judge, and when the car appeared on the road, the bell-ringers in the church began a welcoming peal, the children began to cheer, and the crowd of eager sightseers began to press forward, restrained by the police. In the midst of the uproar, the car slowed down, then stopped at the judge's lodging, and out stepped the cook with a little fish basket.

The death occurred on 29th March of Mr. Samuel James Winckworth, clerk to Mr. Justice Humphreys, Lord Atkin, and the late Lord Justice Kennedy. Mr. Winckworth was in his sixty-ninth year.

## Notes of Cases.

### Judicial Committee of the Privy Council.

#### Attorney-General for Ontario v. Attorney-General for Canada and Others.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright, M.R., and Sir Sidney Rowlett. 28th January, 1937.

CANADA—CONSTITUTIONAL LAW—DOMINION LEGISLATION—NATIONAL TRADE MARK—VALIDITY—"REGULATION OF TRADE AND COMMERCE"—BRITISH NORTH AMERICA ACT, 1867 (30 & 31 Vict., c. 3), s. 92 (2)—DOMINION TRADE AND INDUSTRY COMMISSION ACT, 1935, S.C. (25 & 26 Geo. 5, c. 59), ss. 16-26.

Appeal and cross-appeal, by special leave, from a judgment of the Supreme Court of Canada, dated the 17th June, 1936, answering the following question referred to the Court by order of the Governor-General in Council: "Is the Dominion Trade and Industry Commission Act, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?"

The Act was passed for the purpose of giving effect to certain recommendations contained in the report of the Royal Commission on Price Spreads, with regard to trade practices, prevalent throughout Canada, which were deemed to be detrimental to the interest of the public. Section 18 (1) of the Act provided that the words "Canada Standard" or the initials "C.S." should be a national trade mark; and the exclusive property in and the right to the use of such trade mark was declared to be vested in His Majesty in the right of the Dominion. By s. 19 (1), any producer, manufacturer or merchant was given permission to apply the national trade mark to any commodity which conformed to the appropriate statutory specification. The Supreme Court held that ss. 14, 18 and 19 were *ultra vires*; that ss. 16 and 17 were not *ultra vires*; and that ss. 20, 21 and 22, so far as they were applicable to such of the enactments, or to offences created by such of the enactments, enumerated in s. 2 (h) as might be *intra vires* were not *ultra vires*. The court's answer was directed only to those sections as to which it had heard argument. The Attorney-General for Ontario submitted that the judgment holding ss. 20, 21 and 22 *intra vires* was wrong, and that the answers of the Supreme Court of Canada with respect of ss. 18 and 19 were correct; the Attorney-General for Canada contended that ss. 18, 19, 20, 21 and 22 were all *intra vires*; the Attorney-General for New Brunswick was of opinion that ss. 15, 17, sub-s. (3) and ss. 20, 21, 22, 23 and 27 should be held *ultra vires*.

LORD ATKIN, delivering the judgment of the Board, said that, except as to the validity of ss. 18 and 19, their lordships agreed with the judgment of the Supreme Court. Sections 18 and 19 were the subject-matter of the cross-appeal. There existed in Canada a well-established code relating to trade marks created by Dominion statutes, to be found now in R.S.C. 1927, c. 201, amended by S.C., 1928, c. 10. No one had challenged the competence of the Dominion to pass such legislation. One obvious source of authority for it would appear to be the class of subjects enumerated in s. 91 (2) (the Regulation of Trade and Commerce), of the British North America Act, 1867. If the Dominion had power to create trade mark rights for individual traders, it was difficult to see why the power should not extend to that which was now a usual feature of national and international commerce—a national mark. The substance of the legislation in question was to define a national mark, to give the exclusive use of it to the Dominion so as to provide a logical basis for a system of statutory licences to producers, manufacturers and merchants. The legislation appeared to their lordships to be within the competence of the Dominion Parliament. No appeal was directed to the Board as to the answer to s. 14. Their lordships therefore would humbly advise His Majesty that the

appeal be dismissed, and the cross-appeal be allowed, and that the answers be varied as to ss. 18 and 19 by stating that the sections were not *ultra vires*, and by adding that as to ss. 23 to 26 inclusive those sections were not *ultra vires*.

COUNSEL: A. W. Roebuck, K.C. (Attorney-General for Ontario), and I. A. Humphries, K.C., for the Attorney-General for Ontario; R. S. Robertson, K.C., L. S. St. Laurent, K.C., C. P. Plaxton, K.C., Peter Wright and R. St. Laurent, for the Attorney-General for Canada; J. B. McNair, K.C. (Attorney-General for New Brunswick), and Frank Gahan, for the Attorney-General for New Brunswick.

SOLICITORS: Blake & Redden, for the Attorneys-General for Ontario and New Brunswick; Charles Russell & Co., for the Attorney-General for Canada.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Hodge v. S. M. Kamgar Shah and Others.

Lord Thankerton, Sir Shadi Lal and Sir George Rankin. 29th January, 1937.

INDIA—FORT WILLIAM (BENGAL)—LIMITATION—APPEAL FROM ORDER OF HIGH COURT—OUT OF TIME—UNAVOIDABLE DELAY—"TIME REQUISITE FOR OBTAINING COPY OF ORDER"—LIMITATION ACT (ix of 1908), s. 12 (2); Sch. I, Art. 151.

Appeal from a judgment of the High Court of Fort William (Bengal) dated the 31st July, 1935, reversing an order made by Cunliffe, J., on the 5th December, 1934, and holding, on a preliminary objection taken to that appeal, that that appeal was in time.

The appellant, one H. R. Hodge, was the highest bidder at a sale by auction held by the High Court Registrar of a mining property forming part of the estate of a deceased man, whose estate had for many years been in the hands of the Official Receiver. In March, 1931, an order of the court was made that the mining property, or a sufficient part of it, should be sold by the Registrar to the best purchaser who should offer what the Registrar considered to be a fair price. In August, 1934, Hodge made a highest bid of Rs. 150,000, which the Registrar accepted subject to confirmation by a judge of the High Court. Cunliffe, J., when the matter came before him, adjourned it for three months, after which a purchaser was found willing to offer Rs. 180,000, to which sum Hodge accordingly increased his own offer, which the judge made an order directing the Registrar to accept. The order was drawn up by the judge not in the presence of the parties, and he added the words "no order as to costs." The contesting respondent, the heir and legal representative of the deceased (the other respondents being other interested parties), wished to appeal against the order, but took the view that, the increased offer of Rs. 180,000 having been obtained largely as a result of his own efforts, the order should contain an order in his favour as to costs. Negotiations and correspondence with regard to costs continued until the 31st January, 1935, when the judge gave his decision on the matter. During February, the intending appellant (the present respondent) was engaged in correspondence with the Registrar with a view to applying to Cunliffe, J. to date the order as of the 31st January, 1935, instead of the 5th December, 1934. On the 25th February, the judge decided to date the order the 5th December. During March, 1935, the necessary formalities in connection with the order were carried through, and on the 28th the order was completed and filed. On the 8th April, 1935, the appeal was filed, the purchaser, Hodge, not being made a party. On the 18th, leave was given to amend the appeal by adding the purchaser. By Art. 151 of Sched. I to the Limitation Act, 1908, an appeal must be filed within twenty days after the date of the order appealed from. By s. 12 (2) of the Act "In computing the period of limitation prescribed for an appeal . . . the time requisite for obtaining a copy of the . . . order appealed from . . . shall be excluded." The High Court held that the

appeal was competent, as the respondent had not, except during the period from the 8th to the 18th April, 1935, been guilty of unavoidable delay, and on the merits they reversed the order as they thought that a higher offer than Rs. 180,000 might be obtainable.

LORD THANKERTON, delivering the judgment of the Board, said that there was *prima facie* good reason for the appellant's objection, because the appeal had been lodged 124 days after the date of the order. Their lordships agreed with the High Court that a portion of the 124 days, the deduction of which would leave less than twenty days was accounted for by the period which elapsed before the intending appellant (the present respondent) could obtain a copy of the order against which he intended to appeal. The first portion of the period had been spent in an attempt to have the order as to costs varied. In fact, a variation had been made, although not that sought. The second portion of the period was occupied by an attempt, which might, indeed, have been doomed to failure from the first, to have the date of the order varied. The fact, however, remained that, during that period, the respondent was engaged in making application for something connected with the settling of the order, which in fact was not completed and filed until the 28th March. Their lordships accordingly agreed that the appeal was competent. As to the merits, their lordships had not been provided with the material on which the High Court had based their decision, and the appeal must therefore be dismissed.

COUNSEL: *A. M. Dunne, K.C.*, and *L. P. E. Pugh*, for the appellant; *S. H. R. Abdul Majid*, for the respondents.

SOLICITORS: *Sanderson, Lee & Co.*; *Francis & Harker*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Court of Appeal.

#### Commissioners of Inland Revenue v. Lawrence Graham & Co.

Lord Wright, M.R., Romer and Greene, L.JJ.

1st, 2nd and 3rd February and 3rd March, 1937.

REVENUE—INCOME TAX—MORTGAGE ON SECURITY OF REVERSIONARY INTEREST—ARREARS OF INTEREST TO BE ADDED TO PRINCIPAL SUM—ADDITIONS MADE AFTER DEDUCTION OF TAX—SALE OF REVERSION BY MORTGAGEES—PAYMENT TO MORTGAGEES OF TOTAL SUM ADDED TO PRINCIPAL MONEYS—CLAIM FOR INCOME TAX IN RESPECT OF IT—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40) All Schedules Rules, r. 21.

Appeal from a decision of Lawrence, J.

By a mortgage dated the 13th January, 1925, a reversionary interest was assigned to the Legal and General Assurance Society to secure a sum of £10,000. By two deeds of further charge dated the 14th December, 1926, and the 4th July, 1928, respectively, further advances were made by the Society to the mortgagor, bringing the total sum advanced up to £25,000. All the advances were on the same terms. By cl. 5 (b) of the mortgage, in case before the falling into possession of the reversion, any interest on this principal money or on any accumulation of interest under that provision added to the principal money should not be paid within thirty days of the due date, then the sum due in respect of the half-year's interest so unpaid should become principal money, as from the date on which it became due, and be added to the principal money and should carry interest at the same rate as that applicable to the principal money, "but so that all interest unpaid on the original principal sum hereby secured and on all sums converted into principal money . . . shall become accumulated in the way of compound interest with half-yearly rests." Default was made by the mortgagor in paying the half-yearly interest due on the 15th April, 1930, and all the interest that fell due after that date down to the 10th January, 1932. This interest was accordingly added to the principal money, the sum added being the net amount of interest after deducting

therefrom income tax at the appropriate rate, the total being £2,378 19s. By deed dated the 14th March, 1932, the Society, in exercise of their power of sale as mortgagees, assigned the reversionary interest to a purchaser for the sum of £30,500, but left £25,000 on mortgage to the purchaser, the society's solicitors being paid the balance. They paid thereout £2,378 19s. to the Society and the balance to a second mortgagee under a second mortgage created in 1929. The Crown now sought to recover income tax from the solicitors in respect of the sum of £2,378 19s., as being a payment of interest out of a fund not already subjected to tax within r. 21 of the All Schedules Rules to the Income Tax Act, 1918. Lawrence, J., rejected the contention.

ROMER, L.J., in giving judgment, dismissing the Crown's appeal, referred to *Commissioners of Inland Revenue v. Holder*, 16 T.C. 540, *Lord Clancarty v. Latouche*, 1 B. & B. 420, and *Ex parte Bevan*, 9 Ves. 223. Cases relating to the practice of bankers in charging compound interest had no application to mortgage transactions (see *Rufford v. Bishop*, 5 Russ. 353). His lordship referred to *Earl of Carnarvon v. Commissioners of Inland Revenue*, 19 T.C. 455, and *Marland v. Commissioners of Inland Revenue*, 19 T.C. 467, and said that the latter decision could not be supported. The interest in the present case could not be treated as having been paid by the mortgagor half-yearly out of sums advanced to him for that purpose by the Society. But it was still necessary to see whether the respondents were persons by or through whom any payment of interest had been made within r. 21 (2) which imposed on every such person an obligation to deduct out of the interest a sum representing the tax thereon. This did not necessitate the actual setting aside of cash to meet the tax. A deduction in account was sufficient. If instead of paying the full amount of the interest, the debtor paid his creditor the interest less the tax, he had fulfilled his obligation, even though the payment exhausted his cash in hand or, if he paid by cheque, left nothing standing to his credit at his bankers. If no more than the net interest reached the creditor, the Crown had no complaint. Nor was it concerned with the form in which the net interest reached the hands of the creditor who might accept in full satisfaction a bill or a bond on a chattel, provided the money value did not exceed the net interest due. So it might be agreed that in the event of a mortgagor's failure to pay the net interest the mortgagee would accept in full discharge a capital charge for the like amount on the mortgage security. As and when each charge took effect the tax would have to be deducted within the meaning of the rule, since the capital charge merely took the place of a payment by the mortgagor of the net amount and could never exceed it in money value. This was the arrangement made here, and when the respondents paid to the Society out of the purchase money the sums added to the principal moneys, they were paying a sum that had already suffered tax and were under no liability to make any further deduction.

COUNSEL: *The Attorney General* (Sir Donald Somervell, K.C.), *J. Stamp* and *R. Hills*; *Latter, K.C.*, and *C. King*.

SOLICITORS: *Solicitor of Inland Revenue*; *Lawrence, Graham & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### High Court—King's Bench Division.

#### R. v. Railway Assessment Authority; *ex parte* Southampton Corporation.

Lord Hewart, C.J., Swift and Goddard, JJ. 21st January, 1937.

RATING AND VALUATION—RAILWAY COMPANY—NET ANNUAL VALUE OF UNDERTAKING—FIXED BY ASSESSMENT AUTHORITY—REDUCTION ON APPEAL BY RAILWAY AND CANAL COMMISSION—CONSEQUENTIAL REDUCTION OF VALUES APPORTIONED TO COMPANY'S CONSTITUENT UNDERTAKINGS—METHOD OF COMPUTING REDUCED VALUES—

RAILWAYS (VALUATION FOR RATING) ACT, 1930 (20 & 21 Geo. V, c. 24), ss. 3(3) (ii), (iii), 61, 90.

Rules *nisi* for mandamus and certiorari.

In May, 1934, the Railway Assessment Authority, acting in pursuance of their duties under the Railways (Valuation for Rating) Act, 1930, published a completed valuation roll for the Southern Railway Company, in which the whole of the company's undertaking was valued at £2,180,000, of which £100,000 was specified as the net annual value of the company's Southampton Dock undertaking. On appeal to them, the Railway and Canal Commission reduced the net annual value of the whole undertaking to £1,077,131. That decision was in due course confirmed by the House of Lords: 80 SOL. J. 223; [1936] A.C. 266, whereupon it became the Railway Assessment Authority's duty, by revising the company's roll, to make the alterations necessary for giving effect to the decision of the House of Lords. In the course of carrying out that duty, the authority made a reduction in respect of Southampton Dock from £100,000 to £49,409. That reduction was in the same proportion as the reduction of the total valuation which resulted from the decision of the House of Lords. The Southampton Corporation, as rating authority for Southampton, obtained a rule *nisi* for mandamus directing the authority to hear and determine according to the relevant statutes the matter of the value of the Southampton Dock undertaking in the revised valuation roll relating to the company. The corporation also obtained a rule *nisi* for certiorari to remove the entries in the roll relating to the dock undertaking into the court to be quashed. It was contended for the corporation that, if a proper allowance were made for tenant's capital with regard to the dock undertaking, the value of the undertaking would suffer a deduction substantially smaller in proportion than the reduction of the value of the railway undertaking as a whole; and that the Assessment Authority, in adopting a purely arbitrary arithmetical method, had not carried out their statutory duty. It was contended for the authority, *inter alia* that, in settling the original valuation roll, they had given detailed consideration to all the relevant factors in apportioning the total valuation between the constituent undertakings, and they pointed out that no appeal was lodged by the corporation against the valuation of the dock undertaking within the time prescribed by s. 9 of the Act. They further contended that, as a result of the decision of the House of Lords, their statutory duty was to revise the roll, keeping, so far as practicable, the same proportions between the constituent undertakings, but so that the total valuation should amount to £1,077,131, instead of £2,180,000, and that they had no discretion to adopt any new basis of apportionment.

LORD HEWART, C.J., said that, the Assessment Authority being bound to give effect to the order which had been confirmed by the House of Lords, they had then to revise the figures in the original roll. By cl. 6 of the Confirmation of Apportionment Scheme, of the 20th April, 1932, the net annual value of the undertaking of a company as a whole was to be divided among the several constituent undertakings in proportion to the estimated relative values of the several constituent undertakings to the undertaking of the company as a whole. Faced with that duty, the Railway Assessment Authority had inserted the new total for the whole undertaking, and had proceeded, with reference to each of the constituent undertakings, to make a proportionate deduction, so that in each case the revised figure for each constituent undertaking should be in the same proportion to the new figure for the total as that in which the old figure for each constituent undertaking was to the old figure for the whole undertaking. Their contention here was not that the proportion had been varied as between the estimated relative values and the value of the whole, but that, because of what had since taken place, it was incumbent on the assessment

authority, so far as Southampton Dock was concerned, to examine the intrinsic merits of the system and the method by which a particular estimated relative value was assigned to Southampton Dock. In his (his lordship's) opinion, the Assessment Authority had faithfully performed their duty without any excess of jurisdiction, and the observations made, for example, in *Stepney Corporation v. John Walker & Sons Ltd.* [1934] A.C. 365, applied. The rules must be discharged.

SWIFT and GODDARD, J.J., agreed.

COUNSEL: *Sir Stafford Cripps*, K.C., and *Erskine Simes*, showed cause; *R. P. Croom-Johnson*, K.C., and *Harold Willis*, in support.

SOLICITORS: *Torr & Co.*; *Godden, Holme & Ward*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Greenwoods Tileries Ltd. v. Clapson.

BRANSON, J. 8th, 9th and 10th February, 1937.

RIVER—BANK SURVEYORS UNDER A DUTY TO KEEP BANK IN REPAIR—PART OF BANK REPLACED BY WALL OF A BUILDING ERECTED BY PRIVATE INDIVIDUALS—COLLAPSE OF WALL—DAMAGE BY FLOODING—LIABILITY OF BANK SURVEYORS—LIABILITY OF OWNERS OF BUILDING—HIGH TIDES ACT OF GOD—33 GEO. III, c. XIV—LAND DRAINAGE ACT, 1930 (20 & 21 Geo. 5, c. 44).

Action for damages caused by flood.

The plaintiffs owned and occupied land adjoining a bank which protected their land from the waters of a tidal river. The first defendants were bank surveyors, who were responsible for maintaining the bank at the material time. In 1793, a private Act was passed, by which commissioners were appointed to enclose certain land at Barton-on-Humber, and providing that the commissioners should erect a bank and keep it repaired. Acting under an award drawn up in pursuance of the Act, the commissioners erected a bank, and directed that it should be maintained in its then existing form and be kept at a height sufficient to retain the Humber at high tide. The repairing of the bank was entrusted to "bank surveyors" to be elected annually. After the erection of the bank, the predecessors of the second defendants, who were a company owning land adjoining the bank and the plaintiffs' land, erected a building, part of which cut through the bank, so that the wall of the building became to that extent a substitute for the bank. In September, 1935, the wall facing the river collapsed inwards beneath the pressure of a high tide, and the river overflowed the plaintiffs' land and caused them damage. The plaintiffs claimed damages against the bank surveyors on the ground that they had an absolute and continuing duty to maintain the bank under the Act of 1793, and the Award of 1796, in a fit state to retain the waters of the river. Alternatively, they claimed against the second defendants that, in replacing the bank by a wall, their predecessors incurred an obligation to keep it in repair, and that the demolition by the defendants of part of the buildings in 1933 had weakened the wall.

BRANSON, J., said that it was not disputed that, if the building had been erected before the bank, neither the bank surveyors nor the defendant company could have any duty to the plaintiffs in respect of it. That appeared clearly from *Hudson v. Tabor* (1876), 1 Q.B.D. 225: (1877), 2 Q.B.D. 290 (C.A.). The case must, in view of the evidence, be considered on the assumption that the bank was built first. The bank was clearly not vested in the surveyors, and there was nothing in the private Act to suggest that the Legislature intended to shut off the owners of the enclosed lands from access to the river. It was consequently clear that the bank surveyors could not bring an action for trespass against an adjoining owner who cut through the bank in order to have access from his land to the river: *Duke of Newcastle v. Clark's Trustees* (1818), 8 Taunt. 602. It was equally clear that the surveyors had no power to prevent the defendant company's

predecessors from cutting into the bank and replacing part of it by an equivalent defence such as the house in question had originally been: *Behrens v. Richards* [1905] 2 Ch. 614. The peculiar position therefore arose that, while the surveyors were charged by statute with the duty of maintaining the bank, they could not prevent an adjoining owner from cutting through it, and he (his lordship) knew of no principle of law on which he could hold that the surveyors were compelled to maintain the substituted defence. The surveyors were, however, in any event entitled to succeed in their contention that, having regard to their position under s. 1 (4) of the Land Drainage Act, 1930, and to *Cowley v. Newmarket Local Board* [1892] A.C. 345, and *Glossop v. Heston and Isleworth Local Board* (1879), 12 Ch. Div. 102, their failure, if any, was a mere non-feasance for which no action for damages would lie against them. The defendant company, however, having, through their predecessors, cut through the bank, had created a peril against which they must guard at all events. They were in the position of the defendant in *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330. The application of that case was, however, rather by analogy, because the defendant company's liability was subject to the qualification that, if they could show that the collapse of the wall had been caused by an outside cause such as a collision with it by a ship, their duty would be limited to repairing the wall as soon as possible. That expression of opinion was, however, *obiter*, because the company had been unable to prove any such outside cause. The defendant company's contention that the tide which caused the collapse was an act of God against which they were under no duty to guard failed. Had the wall been as strong as the bank, it would, like the bank, have resisted the tide. Moreover, the tide in question was less high than one previously recorded so recently as 1921. As soon as it was shown that a tide as high as that of 1921 could occur, the danger of its recurrence was one which could be foreseen, and it could not be regarded as an act of God (*Reg. v. Commissioners of Sewers for Fobbing Levels* (1885), 14 Q.B.D. 561, at p. 574. There must be judgment for the bank surveyors and judgment for the plaintiffs against the defendant company for damages to be ascertained.

COUNSEL: *Tristram Beresford*, K.C., and *A. S. Diamond*, for the plaintiffs; *Sydney Turner*, K.C., and *Ifor Lloyd*, for the bank surveyors; *N. L. C. Macaskie*, K.C., and *G. H. Streetfield*, for the defendant company.

SOLICITORS: *D. W. Drummond*; *Stooke-Vaughan & Taylor*, agents for *Nowell & Co.*, Barton-on-Humber; *Pritchard, Sons, Partington & Holland*, agents for *A. M. Jackson & Co.*, Hull.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### **Green v. Kursaal (Southend-on-Sea) Estates, Ltd., and Others.**

Goddard, J. 16th February, 1937.

SUNDAY OBSERVANCE—CLAIM FOR PENALTIES—CLAIM AGAINST PRINTERS AND PUBLISHERS OF NEWSPAPER AS ADVERTISERS—WHETHER MAINTAINABLE—ADVERTISEMENT OF AN AMUSEMENT PARK—WHETHER AN ADVERTISEMENT OF A PUBLIC ENTERTAINMENT—SUNDAY OBSERVANCE ACT, 1780 (21 Geo. III, c. 49), s. 3.

Action for penalties under the Sunday Observance Act, 1780.

The plaintiff Green claimed penalties against Kursaal (Southend-on-Sea) Estates, Limited, as the keepers of the Kursaal building and estate, when on certain Sundays, as the plaintiff alleged, the place was opened for public entertainments and amusements, and persons were admitted to it for payment of money; against one, Williams, the managing director of the Kursaal, as the keeper of the place; against John H. Burrows and Sons, Limited, for advertising the alleged entertainments on those Sundays in certain newspapers and other publications of which they were printers

and publishers; against Printers and Publishers (S.E.), Limited, as advertisers, in respect of three advertisements in the *Southend Times*; against one Hames, licensee of a hotel at Southend, as an advertiser, in respect of an alleged display of advertisements in the hotel; against Southend-on-Sea Kursaal Water Chute and Gravity Rides, Limited, of the Kursaal, in respect of the alleged use of a water chute on Sundays. All the defendants pleaded "Not guilty by statute." In the course of the hearing, Goddard, J., ruled that there was no evidence against any of the defendants except Hames and John H. Burrows and Sons, Limited, and against the latter only in respect of one advertisement in the *Southend Pictorial Telegraph*.

GODDARD, J., giving judgment, reviewed the evidence as to the Kursaal, and said that he would have had little difficulty in holding it a place of public entertainment or amusement, provided it was proved that public entertainment or amusement was afforded at any particular time. The evidence was that the Kursaal was open all the summer of 1936, but there was no evidence that a single one of the side-shows was working on Sunday. It only remained to deal with the charges against Burrows & Sons, and Hames, under s. 3 of the Act, which provided: "that any person advertising, or causing to be advertised, any public entertainment or amusement, . . . on the Lord's Day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement, shall respectively forfeit . . ." The advertisement in question published by Burrows & Sons ran thus: "Season 1936. Amusement park and attractions. Open daily, including Sundays." It was contended for that company that a limited company could not commit that offence. He (his lordship) did not think it necessary to give a concluded decision on that point, but if he had to do so he would have followed the decision of Rowlatt, J., in *Orpen v. Haymarket Capitol, Ltd* (1931), 47 T.L.R. 575, rather than that of Horridge, J., in *Attorney-General v. Walkergate Press Ltd.* (1930), 46 T.L.R. 177, because Rowlatt, J.'s decision was under the Sunday Observance Act, 1780, while Horridge, J., was dealing with the Lotteries Act. Further, the plaintiff had charged these defendants as "advertisers." He (his lordship) did not think that they "advertised or caused to be advertised." The first part of the section referred to the person who paid for the advertisement, and the latter part to the person who printed it. It was true that the penalty was the same in both cases, but, if this had been an indictment, a prisoner would have been acquitted on the ground that he was charged under the wrong words. The plaintiff had sought leave to amend the statement of claim. He (his lordship) had refused for good reason, but he doubted if he had power to allow the amendment. The alleged offence was on the 8th August, and it was now the 15th February, so that, to allow the plaintiff to amend would, in effect, be allowing him to bring a new action after the expiration of the statutory limit of six months. Nor did he think that the advertisement was an advertisement of a "public entertainment or amusement." It was an advertisement of a place. If one went to that place, one might find an entertainment going on, or one might not. He doubted if that was an offence. The statute was aimed at particular entertainments, and he did not think a mere reference to "amusement park and attractions" was enough. As to Hames, there was no evidence that he was the licensee of the hotel in question. The only evidence was that a young man found a bill in the bar of the hotel, and that he saw the name "Hames" over the door, but could not remember the Christian name or initials. There was no evidence even that the licensee was a man and not a woman. The action failed against all the defendants.

COUNSEL: (The plaintiff appeared in person). *Sir William Jowitt*, K.C., and *G. O. Slade*, for the Kursaal Company and Williams; *G. Beyfus*, K.C., and *Gilbert Paull*, for the Water Chute Company; *Cyril Salmon*, for Hames; *Roland Burrows*,

K.C., and *Quintin Hogg*, for Burrows & Sons, Limited; *Percy Lamb*, for Printers and Publishers (S.E.), Limited.

SOLICITORS: *Vizard, Oldham, Crowder & Cash; Bird & Bird; Crossman, Block & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### **R v. Lawson and Another; Ex parte Nodder.**

Swift, Finlay and Goddard, J.J.

22nd February, 1937.

CONTEMPT OF COURT—MAN ACCUSED OF CRIME—PHOTOGRAPH OF ACCUSED PUBLISHED IN NEWSPAPER—DESCRIPTION OF ACCUSED PREVIOUSLY BROADCAST—QUESTION OF IDENTITY—WHETHER FAIR TRIAL PREJUDICED BY PUBLICATION OF PHOTOGRAPH.

Rule *nisi* for a writ of attachment for alleged contempt of Court against the editor and publishers of the *Empire News*.

On the 17th January, 1937, there was published in that newspaper a photograph of Frederick Nodder, who had been accused of the abduction of a girl named Mona Tinsley. When the rule was applied for, it was stated that Nodder had been charged with the abduction before the Newark justices, and that the question of identity was bound to be a very material issue in the case. The photograph of Nodder was published, with the following caption: "Frederick Nodder, aged 45, motor driver, who is remanded on a charge of abducting the missing schoolgirl, Mona Tinsley, of Newark." It was argued that, whenever identity was in issue, it was prejudicial to a fair trial to publish a photograph of the person charged so that any person who might be called on to identify him could see it. After Nodder had been detained, the police caused him to be photographed, and then used the photograph for the purposes of the *Police Gazette*. A full description of the man who was alleged to have been with Mona Tinsley was given to the Press, who were asked to give the description the widest possible publicity. On the same day the British Broadcasting Corporation broadcast a full description of the man, which had been provided by the police. On the 12th January, the Press were asked to publish an appeal for persons to come forward, who had seen Nodder in Retford on the 6th. In answer to the charge against him Nodder said that he did not take away the girl by force or fraud. He stated that she had wanted to go with him and that, after she had stayed a night in his house, he took her to Worksop, where her aunt lived. The issue raised by the pending charge was whether or not the girl had been taken away by force or fraud, and it was contended, in showing cause against the rule, that no question of identity arose. It was contended in support of the rule that subsequent events had shown that the question of identity would, or at least might, arise at Nodder's trial. Besides making the statement to which reference had been made, Nodder had also said: "I know nothing at all about it." No one was entitled to assume what Nodder's defence would be.

SWIFT, J., said that he had no hesitation in thinking that the rule ought to be discharged. Nobody doubted that the publication in a newspaper of the photograph of an accused person would amount to a contempt of court where it was reasonably clear that the question of his identity had arisen, or might arise, and the publication was calculated to prejudice a fair trial: *R v. Daily Mirror, ex parte Smith* [1927] 1 K.B. 845. The facts of the present case, however, disclosed no ground whatever for the suggestion that the publication of the photograph in the *Empire News* was in the least degree calculated to interfere with the fair trial of the proceedings which were taking place against Nodder. It had been urged that some question of the identification of Nodder might, at some future time, arise. All that they knew now was that, up to the time of the publication of the photograph, there was no such question. A full description of Nodder had been issued by the police, and he (his lordship) could see no

difference between the description and the photograph. The rule *nisi*, he thought, would never have been granted if the court had not been led to believe that some question of disputed identity existed at the time when the photograph was published. The rule should be discharged.

FINLAY, J., agreed.

GODDARD, J., also agreed, and said that, in a previous case, he had expressed the opinion that such applications, when they related to criminal proceedings, should only be made by, or with the consent of, the Attorney-General. The present case strengthened that view.

COUNSEL: *Sir William Jowitt, K.C.*, and *Theobald Mathew* showed cause; *Nigel Robinson* in support.

SOLICITORS: *Theodore Goddard & Co.; Morrish, Strobe and Searle*, agents for *Hodgkinson & Beevor*, Newark.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### **Probate, Divorce and Admiralty Division.**

#### **White (otherwise Bennett) v. White.**

Bucknill, J. 19th February, 1937.

NULLITY—JURISDICTION—BIGAMOUS MARRIAGE IN AUSTRALIA—FOREIGN DOMICIL AND RESIDENCE OF RESPONDENT—WOMAN'S PETITION IN ENGLAND—NO APPEARANCE BY THE RESPONDENT—JURISDICTION EXERCISED.

This was the petition of Mrs. Ghislane Rosy White, formerly Bennett, asking for a decree of nullity on the ground that the marriage celebrated between her and Augustine George White at Melbourne, Australia, on 30th September, 1926, was bigamous. The petition alleged that in August, 1908, the respondent was lawfully married to Mary Dolores Fleri, and that the marriage was still subsisting. It further alleged that the petitioner was domiciled in England, and that the respondent was domiciled and resident in Australia. There was no appearance by the respondent. On appeal from refusal by the Registrar of the usual certificate on the ground of want of jurisdiction, Bucknill, J., ordered the case to be set down but directed that the papers be sent to the King's Proctor so that he, if the Attorney-General so directed, might be represented at the hearing to assist the court on the matter of jurisdiction. At the hearing a formal admission by the respondent was put in admitting the facts of the bigamous marriage.

BUCKNILL, J., in the course of delivering a considered judgment, said that in England it was established law that, in cases where a dissolution of marriage was sought, the domicile of the husband was the cardinal and controlling fact giving sole jurisdiction to dissolve the marriage. That principle had also been applied to suits for nullity on the ground of incapacity in *Inverclyde (otherwise Tripp) v. Inverclyde* [1931] P. 29; 74 SOL. J. 863. In the present case the petitioner was a woman, resident and domiciled in England, a citizen of this country. In the State of Victoria, in the Commonwealth of Australia, she had gone through a ceremony of marriage with a man already married. At the time when her petition was filed the man was residing in the State of Western Australia, and was domiciled there, or possibly in Malta, his domicile of origin. Was there jurisdiction in the Court in England, on proof of those facts, to pronounce a decree of nullity? The essential ingredients to establish jurisdiction in a case of nullity of this kind had not been clearly established by the reported cases. *Inverclyde v. Inverclyde, supra*, did not decide the point. Bateson, J., remarked in that case, at p. 48: "In truth bigamy cases help very little, as in them as distinct from this there never has been a marriage, and the argument that there is no distinction or difference between the two classes of cases seems to me untenable." In his (his lordship's) view the case of *Salvesen (or Von Lorang) v. Austrian Property Administrator* [1927] A.C. 641, was not an authority against the exercise of jurisdiction in the present case. That case decided that jurisdiction in a nullity suit might be based

on domicile and Lord Phillimore even said that the foreign court in the circumstances of *Salvesen's Case* had exclusive jurisdiction, but there both the petitioner and the respondent were in fact domiciled in Wiesbaden, whereas in the present case the petitioner had not, and never had had, the same domicile as the respondent, and was in fact domiciled in England. It seemed to him (his lordship) that it would be quite unsound to hold that the petitioner ever acquired the domicile of the respondent, either in law or in fact. The case most apposite to the present was *Roberts v. Brennan* [1902] P. 143, where a decree of nullity for bigamy was granted to parties who had been resident within the jurisdiction since the marriage ceremony. The case was undefended, and Sir Francis Jeune, P., accepted the arguments on behalf of the petitioner that residence within the jurisdiction was sufficient, stating that in his view residence—not domicile—was the test of jurisdiction in a nullity case, following the practice of the Ecclesiastical Courts, as prescribed by the Matrimonial Causes Act, 1857, s. 22. Shelford's "Law of Marriage and Divorce" (1841), at p. 488, stated that, in matrimonial causes, the power of the court is in *personam*, and depends upon the locality of the person cited. Though a defendant may usually reside out of the jurisdiction, yet, if he is served with a citation within the jurisdiction of an ecclesiastical court in England, in a suit for nullity of marriage, that court has jurisdiction to try the validity of the marriage, wherever it may have been contracted. If, as in the present case, the respondent had never resided in England, but the petitioner was domiciled and resident here, was it necessary for her to proceed to whatever part of the world the respondent might happen to reside in, in order to get her status established by a decree of nullity? Counsel on behalf of the King's Proctor had argued that in a case of nullity such as the present, jurisdiction must be based on residence or domicile of the respondent within the jurisdiction. Further, that the decree asked for was not merely declaratory but that the statutory jurisdiction of the court was invoked, and that certain consequences might flow from such a decree, such as custody of children, order for maintenance, variation of settlement. Also there was a general principle that the court would not exercise jurisdiction in a case where the respondent had not subjected himself to the jurisdiction by residence, or domicile, or by submission to it. He (his lordship) appreciated the weight of those arguments, and if the respondent had entered an appearance to the petition under protest against the exercise of the jurisdiction he would have doubted whether the court had jurisdiction over the matter, but the respondent had made it clear that he had no objection to the exercise of the jurisdiction. In his (his lordship's) view in the special circumstances of the case, the court had jurisdiction to make the decree sought by the petitioner. There would not be any conflict of laws between different jurisdictions, because it was clear that the marriage was bigamous, and therefore, by the law of every Christian community, there never was any matrimonial status common to the petitioner and the respondent. Nor would the respondent suffer any injustice by the exercise of the jurisdiction. Moreover, it was just to the petitioner, and also in the public interest, that she, being domiciled and resident here, should have her status as a single or as a married woman judicially established here, and should not have to proceed abroad to wherever the respondent happened to reside, for that purpose, unless the respondent objected to the jurisdiction. In the circumstances, unless it was clear that the court had no jurisdiction, he (his lordship) considered that he ought to interpret the statute in such a way as to provide the remedy sought. He therefore pronounced a decree of nullity.

COUNSEL: Noel Middleton, K.C., and William Latcy, for the petitioner.

SOLICITORS: Robinson & Bradley, for Gee, French and Entwistle, Liverpool; The King's Proctor.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

## Reviews.

*Gibson's Practice of the Courts.* Sixteenth Edition. 1936.

By ARTHUR WELDON, Solicitor, and ROBERT LEE MOSSE, a Master of the Supreme Court. Royal 8vo. pp. xxxvi and (with Index) 299. London: The "Law Notes" Publishing Offices. 21s. net.

This volume which has already run through so many editions contains a practical exposition of the proceedings in the Supreme Court of Judicature and the House of Lords. Since the last edition was published the Arbitration Act, 1934, the Administration of Justice (Appeals) Act, 1934, and the Supreme Court of Judicature Act, 1935, have been added to the Statute Book, as also has the County Courts Act, 1934, which came into force at the commencement of the present year. A review of all these important modern statutes has been embodied in the text of the present edition and all material sections of these statutes and of rules relating thereto will be found cited. The two subjects of "Discovery" and "Execution" have been re-arranged and made simpler and more intelligible. The volume is primarily of value to law students but it may well find place in the practitioner's library as it deals exhaustively with the procedure of the courts and with the duties which fall upon the solicitor in relation thereto. A very useful appendix takes the form of a "timetable" setting out the various times during which various things must be done and various steps taken.

*The Conduct of and Procedure at Public, Company and Local Government Meetings (The Companies Act, 1929, and the Local Government Act, 1933).* By ALBERT CREW, of Gray's Inn and the Middle Temple, Barrister-at-Law, Recorder of Sandwich. Assisted by EVELYN MILES, B.A., B.Sc., of the University of London and Lincoln's Inn, Barrister-at-Law. Fifteenth Edition. 1936. Crown 8vo. pp. xxxii and (with Index) 435. London: Jordan & Sons, Limited. 7s. 6d. net.

Copious references to and quotations from the authorities as well as a comprehensive statement of the law and appendices containing definitions of terms, notes on the general law, the practice of the police at public meetings, free speech, blasphemy, forms of notices of meetings, proxies, etc., combine to make this an extremely useful reference work. Students will find the book invaluable for the purpose of preparation for the secretarial examinations. Lists of questions taken from these examinations are contained in an appendix.

*Sutton and Shannon on Contracts.* By RALPH SUTTON, M.A., One of His Majesty's Counsel, Reader in Common Law to the Council of Legal Education, and N. P. SHANNON, of Gray's Inn, Barrister-at-Law, Lecturer at the University College of Wales, Aberystwyth. Second Edition, 1937. Demy 8vo. pp. lxx and 389 (index, 24). London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

This, the fifth edition of the original "Pease and Latter on Contracts," has so far departed from the original in form and substance as to justify its being called the second edition of "Sutton and Shannon." The new edition notes the modifications in the law produced by the Law Reform (Married Women and Tortfeasors) Act, 1935, and the Law Reform (Miscellaneous Provisions) Act, 1934. A novel and pleasing feature is that a reference to the "English and Empire Digest" follows each case cited and a reference to "Halsbury's Statutes" follows each citation of a statute. Little complaint can be made of omissions—over a thousand cases and nearly a hundred statutes are cited. The style is well adapted to the use of students. The law is stated in code form, with articles of the code, notes and illustrations; an ideal form for a legal text-book, as many writers of reference works are beginning to recognise. While it is appreciated that the limitations of available space prevent the inclusion of too

many illustrations, we should have preferred more illustrations and fewer notes. For instance, the references in the notes to the important cases of *Finlay & Co. (James & Co.) v. Kwik Hoo Tong Handel Maatschappij* [1928] 2 K.B. 604, and *Banco de Portugal v. Waterlow & Sons* [1932] A.C. 452, at p. 269 of the work, could well have been used as illustrations. The same criticism applies to the reference to *Hall, Ltd. v. Pym Junior & Co., Ltd.* (1928), 33 Com. Cas. 324, at p. 273 of the work, on damages in "string contracts." This question is of increasing commercial importance and deserves careful treatment, with special reference to the facts of the cases, having regard to the remarks of Scrutton, L.J., and Sankey, L.J., in *Finlay & Co. v. Kwik Hoo Tong, etc.* (above) on the conflict between *Hall, Ltd. v. Pym Junior & Co., Ltd.* (above) and *William Bros. v. Ed. T. Agius, Ltd.* [1914] A.C. 510. This, in our respectful submission, is not too small a matter to be incorporated in a students' text-book. However, what to include is a matter for the editors' final decision, and with the bewilderingly enormous mass of material at their command it is amazing that the editors have produced so compact and so well arranged a work and one so admirably suited to the needs of law students.

### Books Received.

*The Conveyancer and Property Lawyer.* No. 3. March, 1937. London: Sweet & Maxwell, Ltd. 6s. net.

*Cases Illustrating General Principles of the Law of Contract.* By JOHN C. MILES, Kt., Warden of Merton College, Oxford, Barrister-at-Law, and J. L. BRIERLY, Fellow of All Souls' College, Oxford, Barrister-at-Law. Second Edition, 1937. London: Humphrey Milford, Oxford University Press. 21s. net (with Anson's Contract, 33s. net).

*Stone's Justices' Manual*, 1937. Sixty-ninth Edition. By F. B. DINGLE, Solicitor, Clerk to the West Riding Justices. Demy 8vo. pp. ccc and (with Index) 2,532. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. 37s. 6d. net. Thin Edition, 5s. extra.

## Parliamentary News.

### Progress of Bills. House of Lords.

Agricultural Wages (Regulation) (Scotland) Bill.	
Amendments Reported.	[23rd March.
Barnet District Gas and Water Bill.	
Reported, with Amendments.	[18th March.
Barnsley Corporation Bill.	
Read Third Time.	[24th March.
Brighton, Hove and Worthing Gas Bill.	
Read First Time.	[19th March.
British Shipping (Continuance of Subsidy) Bill.	
Royal Assent.	[25th March.
Burgess Hill Water Bill.	
Read Third Time.	[24th March.
Consolidated Fund (No. 2) Bill.	
Royal Assent.	[25th March.
Deaf Children (School Attendance) Bill.	
In Committee.	[23rd March.
General Cemetery Bill.	
Read First Time.	[23rd March.
Great Western Railway Bill.	
Read First Time.	[25th March.
Grimsby Corporation (Grimsby and District Water, etc.) Bill.	
Read First Time.	[25th March.
Huddersfield Corporation Bill.	
Read First Time.	[18th March.
Hydrogen Cyanide (Fumigation) Bill.	
Read First Time.	[23rd March.
Kingsbridge and Salcombe Water Board Bill.	
Read Third Time.	[24th March.
Liverpool Exchange Bill.	
Royal Assent.	[25th March.
Local Government (Financial Provisions) Bill.	
Royal Assent.	[25th March.

Mansfield District Traction Bill.	
Read Third Time.	[24th March.
Merchant Shipping Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Bedford) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Colwyn Bay) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Ealing Extension) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (East Hertfordshire Joint Hospital District) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Somerset and Wilts) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Waltham Joint Hospital District) Bill.	
Royal Assent.	[25th March.
Ministry of Health Provisional Order Confirmation (Wisbech Joint Isolation Hospital District) Bill.	
Royal Assent.	[25th March.
National Health Insurance Act (Amendment) Bill.	
Royal Assent.	[25th March.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.	
Royal Assent.	[25th March.
North Metropolitan Electric Power Supply Bill.	
Read First Time.	[19th March.
Public Health (Drainage of Trade Premises) Bill.	
Read Third Time.	[23rd March.

### House of Commons.

Barking Corporation Bill.	
Reported, with Amendments.	[24th March.
Barnsley Corporation Bill.	
Read First Time.	[24th March.
British Nationality and Status of Aliens (Amendment) Bill.	
Read First Time.	[24th March.
Burgess Hill Water Bill.	
Read First Time.	[24th March.
Great Western Railway Bill.	
Read Third Time.	[24th March.
Grimsby Corporation (Grimsby and District Water, etc.) Bill.	
Read Third Time.	[24th March.
Kingsbridge and Salcombe Water Board Bill.	
Read First Time.	[24th March.
London, Midland and Scottish Railway Bill.	
Reported, with Amendments.	[23rd March.
London Passenger Transport Bill.	
Reported, with Amendments.	[24th March.
Mansfield District Traction Bill.	
Read First Time.	[24th March.
Margate, Broadstairs and District Electricity Bill.	
Reported, without Amendment.	[23rd March.
Ministers of the Crown Bill.	
Read First Time.	[23rd March.
Ministry of Health Provisional Order (South Nottinghamshire Joint Hospital District) Bill.	
Read Third Time.	[25th March.
Rickmansworth and Uxbridge Valley Water Bill.	
Reported, without Amendment.	[23rd March.
Rotherham Corporation Bill.	
Read Third Time.	[25th March.
Southampton Corporation Bill.	
Read Third Time.	[25th March.
Unemployment Insurance (Amendment) Bill.	
Read First Time.	[23rd March.
Wandsworth and District Gas Bill.	
Reported, with Amendments.	[23rd March.

### Questions to Ministers.

#### TRIAL BY JURY (ACCOMMODATION).

Captain CUNNINGHAM-REID asked the Attorney-General whether he will consider representing to the competent legal or other authorities that juries, frequently called upon to serve in long cases, should be provided with some form of seat more comfortable than the present wooden benches and with some kind of desk furnished with paper and pencils to enable them to take notes.

THE ATTORNEY-GENERAL: I do not think that there are sufficient grounds for the action suggested [24th March.

## LAW OFFICERS (SALARIES AND FEES).

Mr. V. ADAMS asked the Financial Secretary to the Treasury whether he will state in two sums the total remuneration, inclusive of salaries and fees, enjoyed by the successive Attorneys-General and Solicitors-General for England during the ten years ended 31st December, 1936.

Lieut.-Colonel COLVILLE: The total sums received by the Attorneys-General and Solicitors-General for England for salaries and fees during the ten years ended 31st March, 1936 (the latest date for which figures are at present available), are as follows: Attorneys-General £176,493 19s., Solicitors-General £104,984 9s. 8d. [25th March.

## RENT RESTRICTIONS ACT (DEPARTMENTAL COMMITTEE).

Mr. MESSER asked the Minister of Health whether he is now in a position to say whether the Rent Restrictions Act will be continued after 1938.

Mr. DUNCAN asked the Minister of Health whether the Government have yet come to a decision as to the future of the Rent Restrictions Act after 1938.

Sir K. WOOD: The Government have decided to appoint a Departmental Committee to inquire into and report on the future of the Rent Restrictions Acts.

Mr. C. WILLIAMS: Have the Government also decided to find pigeon-holes for the previous reports?

Mr. DUNCAN: Will the Committee have power to make recommendations for London different from those for other parts of the country?

Sir K. WOOD: I am considering the terms of reference, and I should certainly think that it will be open to them to do that; and, I may add, that previous reports of this kind have been most helpful. [25th March.

## The Solicitors' Law Stationery Society, Ltd.: Annual Report.

The forty-eighth Annual General Meeting of the Society was held at 102/7, Fetter Lane on Tuesday, 23rd March, Sir Bernard E. H. Bircham, G.C.V.O., the Chairman of the Society, in the Chair.

After the Secretary had read the notice convening the meeting and the Auditors' Report, the Chairman said:

It is now my duty to move the adoption of the Report and the approval of the Accounts.

Taking first the Directors' Report, you will see that both the turnover and profit have increased considerably. Both are record figures, and the profit is higher by nearly £10,000 than the previous highest figure in 1934. The Directors feel that this result is very satisfactory indeed.

We recommend a dividend of 15 per cent. for the year, compared with 14 per cent. for 1935. An interim dividend of 4 per cent. was paid on account in October. The dividend and the bonuses to customers and staff will absorb the sum of £62,255 16s. 9d. Out of the balance, the Directors propose to add £5,000 to the Reserve Account, and to place £2,000 to the Women's Pension Reserve, leaving £12,380 15s. to be carried forward against £11,492 14s. 5d. brought in.

You will, I know, all have heard with deep regret of the sudden death in September last of our Managing Director, Mr. H. Basil Cahusac. Joining the Society as Secretary in 1892, he was made General Manager and Secretary in 1898, and Managing Director in 1920. He set before him a high standard of efficient service to the Profession, and he played a leading part in the Society's progress and prosperity.

The Directors gave very careful consideration to the appointment of Mr. Cahusac's successor, and they have appointed as General Manager and Secretary, Mr. F. J. Holroyde, who has been intimately connected with Mr. Cahusac during the last ten years, and they have every indication that this appointment will turn out a success.

You will see that we have very considerably increased our resources in Birmingham by the purchase of the old-established Law Stationery business of Edward Hurst & Co., including the Birmingham Law Press. We are more than satisfied with the results of this purchase since the business was taken over. We now have an efficient and well-equipped deed-printing works in the heart of the City, and within a few minutes' walk of Colmore Row, where our Sales Departments are situated. The cost of the business, amounting to £9,101 3s. 2d. has been written off the Reserve Account.

Turning now to the balance sheet, on the Assets side you will see that there is again a substantial addition to Machinery, Plant and Type, and this is partly due to the plant taken over in Birmingham, and partly due to a continuance of our policy

of keeping that of our London Works up to a high standard of efficiency.

In the Profit and Loss Account, the working expenses are up by £2,642, due to the increased expenses in Birmingham and to the expansion of the business generally. On the credit side, the gross profit is higher by £14,305. I should like to say that the increase is well spread over the Society's activities, and the various departments have, almost without exception, contributed their quota towards the improvement. The departmental managers are to be congratulated on these results. The Society's success depends to a very large extent upon their personal zeal and devotion to the Society's interests and I cannot speak too highly of their work.

Prospects for the coming year are encouraging. The general improvement in trade all over the country will, we hope, mean more work for the solicitor and, consequently, for the law stationer. The only factor which tends to qualify this optimistic outlook is the upward trend in prices of raw materials, particularly, as far as we are concerned, paper and metal. We have, so far, been able to absorb such increased prices without passing them on to our customers. We shall maintain that policy wherever we can, but the possibility of some increase in the price of certain of our products is one that must not be overlooked.

With a view to keeping the profession in closer and more regular touch with the developments in our business, and bringing before them the diverse nature and extent of the services which we offer, we have this year inaugurated *The Oyez Bulletin*, a quarterly publication, of which the first issue was sent out to the profession in January. Judging by the appreciative letters we have received, it would seem that solicitors are finding the Bulletin helpful, and we hope that it will encourage them to make full use of the Society's services.

Again I have to refer with very much pleasure to the excellent work of your staff from the highest to the lowest. Were it not for their steady work and hearty co-operation, it would be impossible for the Board to show such good results, and the shareholders should be very much indebted to them.

I now beg to move the adoption of the report, and the approval of the accounts, and I will ask Mr. Barham to second the resolution.

The motion was seconded by Mr. F. E. F. Barham and carried unanimously.

On the motion of the Chairman, seconded by Mr. Barham, it was unanimously resolved to pay a dividend of 15 per cent., on account of which an interim dividend of 4 per cent. had been paid in October, and to distribute bonuses to the customers and staff in accordance with the articles.

The directors retiring by rotation, Sir Bernard Edward Halsey Bircham and Mr. Francis Edward Foster Barham, were re-elected.

The auditors, Messrs. Fuller, Wise, Fisher & Co., were re-elected for the ensuing year.

The meeting closed with a vote of thanks to the Chairman.

## Societies.

### The Law Society.

#### SCHOOL OF LAW.

The Law Society School of Law held a reception for past and present students in The Law Society's Hall, Chancery Lane, on Thursday, 18th March, in order to meet the Solicitor-General, Sir Terence O'Connor, K.C., M.P. The Chairman of the Legal Education Committee, Mr. T. H. Bischoff, announced during the evening that, owing to the demands of business at the House of Commons in connection with the passing of the Spanish Non-Intervention Bill, the Solicitor-General was unfortunately unable to attend. Entertainments of a high order therefore occupied most of the evening, singing and entertaining by Ashmoor Burch and Marriott Edgar, and comedy conjuring by Giovanni.

### The Hardwicke Society.

A meeting of the Society was held on Friday, 19th March, at 8.15 p.m., in the Middle Temple Common Room, the President (Mr. J. A. Petrie) in the chair. Mr. D. C. L. Potter moved "That town and country planning is a farce." Mr. J. B. Willis opposed. There also spoke Mr. McCready, Mr. Lewis Sturge (Hon. Secretary), Mr. A. Newman Hall, Mr. A. A. Baden Fuller, Capt. Norman Edwards, Mr. J. A. Petrie (President), and Mr. Walter Stewart. The hon. mover having replied, the House divided, and the motion was carried by two votes.

## Legal Notes and News.

### Honours and Appointments.

The King has been pleased to approve the appointments of SIR SHAH MUHAMMAD SULAIMAN, Chief Justice of the High Court of Judicature at Allahabad, and Mr. MUKUND RAMRAO JAYAKAR, Barrister-at-law, as Puisne Judges of the Federal Court of India, which is to come into existence under the Government of India Act, 1935, with effect from 1st October next.

The Lord Chancellor has decided to appoint Mr. EDWARD WATKINS CAVE, K.C., of The Bury, Hemel Hempstead, Herts., to be the Judge of the County Courts on Circuit 55 (Bournemouth, etc.) in the place of His Honour Judge Maxwell, who retired on the 1st April. The appointment will be dated the 1st April, 1937. Mr. Cave was called to the Bar by the Inner Temple in 1897, and took silk in 1921. He has been Recorder of Birmingham since 1932.

In consequence of the appointment of Mr. G. D. ROBERTS, Senior Prosecuting Counsel to the Crown at the Central Criminal Court, as a King's Counsel, the Attorney-General has made the following appointments:—

Mr. G. B. MCCLURE to be Senior Prosecuting Counsel.

Mr. L. A. BYRNE to be Second Senior Prosecuting Counsel.

Mr. E. A. HAWKE to be Third Senior Prosecuting Counsel.

Mr. T. C. HUMPHREYS to be First Junior Prosecuting Counsel.

Mr. S. G. HOWARD to be Second Junior Prosecuting Counsel.

Mr. H. ELAM to be Third Junior Prosecuting Counsel.

Mr. J. YATES, Solicitor, Assistant Town Clerk of Mossley, has been appointed Assistant Solicitor at Ilkeston. He was admitted a solicitor in 1933.

Lowestoft Corporation have appointed Mr. F. B. NUNNEY, M.A., of Dorking, as Assistant Solicitor in the Town Clerk's Department.

### Professional Announcements.

(2s. per line.)

MESSRS. ARTHUR S. JOSEPH & CO., solicitors, of 3 & 4, Paul's Bakehouse Court, Goddard Street, St. Paul's Churchyard, London, E.C.4, announce that they have taken into partnership Mr. LAURENCE E. CATES, LL.B., who was articled to them, and has been associated with them since his admission. The firm will carry on business under the style of "ARTHUR S. JOSEPH & CATES," at the same address.

### Notes.

Chief Justice James A. Macdonald, of the British Columbian Court of Appeal, has resigned from 1st April.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 15th day of April, at 10 o'clock in the forenoon.

The City of London Solicitors' Company announces that a lecture on the New County Court Rules, 1936, will be given by Mr. Wilfred Dell (Registrar of The Mayor's and City of London Court), at Salter's Hall, St. Swithin's Lane, E.C.4, on Tuesday, 6th April. The lecture will commence at 6 p.m. precisely.

The following days and places have been fixed for holding the Spring Assizes on the Northern and North-Eastern Circuits: Northern Circuit—Charles, J., and Goddard, J.—Tuesday, 6th April, at Liverpool; Monday, 26th April, at Manchester. North-Eastern Circuit—Hawke, J., and Macnaghten, J.—Saturday, 24th April, at Leeds.

Mr. Robert Alexander Cunningham, The Law Society's Librarian, has completed fifty years in the Society's service, and the Council have passed a resolution placing on record their appreciation of his work, and thanking him for the loyalty and devotion which he had displayed in the Society's service. A piece of plate suitably inscribed has been presented to Mr. Cunningham in commemoration of the occasion.

At the annual general meeting of the Institute of Arbitrators (Incorporated), held on 10th March, it was announced that Lord Askwith had been re-elected President for 1937/38, and that the retiring Vice-Presidents, Col. F. N. Falkner, Dr. E. Leslie Burgin and Mr. F. E. Powell, had been also re-elected. The retiring Members of Council, Mr. J. R. W. Alexander, Col. Anthony Rowse and Sir Iltyd Thomas, were re-elected, and the Auditors, Messrs. W. B. Keen & Co., re-appointed.

## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th April, 1937.

	Div. Months.	Middle Price 31 Mar. 1937.	Flat Interest Yield.	Approximate Yield with redemption
<b>ENGLISH GOVERNMENT SECURITIES</b>				
Consols 4% 1957 or after .. ..	FA	109	£ s. d. 3 13 5	£ s. d. 3 7 6
Consols 2½% .. ..	JAJO	76½	3 5 6	—
War Loan 3½% 1952 or after .. ..	JD	102½	3 8 4	3 5 11
Funding 4% Loan 1960-90 .. ..	MN	110½xd	3 12 5	3 6 9
Funding 3% Loan 1958-69 .. ..	AO	95½	3 2 8	3 4 4
Funding 2½% Loan 1952-57 .. ..	JD	93½	2 18 10	3 3 11
Funding 2½% Loan 1956-61 .. ..	AO	88	2 16 10	3 4 6
Victory 4% Loan Av. life 22 years ..	MS	109	3 13 5	3 8 3
Conversion 5% Loan 1944-64 .. ..	MN	113½xd	4 8 3	2 14 7
Conversion 4½% Loan 1940-44 .. ..	JJ	107½	4 3 11	1 19 9
Conversion 3½% Loan 1961 or after ..	AO	101	3 9 4	3 8 9
Conversion 3% Loan 1948-53 .. ..	MS	100½	2 19 10	2 19 6
Conversion 2½% Loan 1944-49 .. ..	AO	97	2 11 7	2 16 0
Local Loans 3% Stock 1912 or after ..	JAJO	88½	3 8 0	—
Bank Stock .. ..	AO	337xd	3 11 2	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after .. ..	JJ	78½	3 10 1	—
Guaranteed 3% Stock (Irish Land Act) 1939 or after .. ..	JJ	88	3 8 2	—
India 4½% 1950-55 .. ..	MN	111	4 1 1	3 8 8
India 3½% 1931 or after .. ..	JAJO	88½	3 19 1	—
India 3% 1948 or after .. ..	JAJO	76	3 18 11	—
Sudan 4½% 1939-73 Av. life 27 years ..	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950 ..	MN	111	3 12 1	3 0 5
Tanganyika 4% Guaranteed 1951-71 ..	FA	109	3 13 5	3 3 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72 ..	JJ	106	4 4 11	3 0 8
Lon. Elec. T. F. Corpn. 2½% 1950-55 ..	FA	89½	2 15 10	3 5 0

### COLONIAL SECURITIES

Australia (Commonw'th) 4% 1955-70 ..	JJ	106	3 15 6	3 10 11
Australia (C'mm'nw'th) 3% 1955-58 ..	AO	91xd	3 5 11	3 12 0
Canada 4% 1953-58 .. ..	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49 .. ..	JJ	99	3 0 7	3 2 0
*New South Wales 3½% 1930-50 .. ..	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945 .. ..	AO	96	3 2 6	3 11 9
Nigeria 4% 1963 .. ..	AO	110xd	3 12 9	3 8 7
*Queensland 3½% 1950-70 .. ..	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73 .. ..	JD	103	3 8 0	3 5 2
*Victoria 3½% 1929-49 .. ..	AO	99	3 10 8	3 12 1

### CORPORATION STOCKS

Birmingham 3% 1947 or after .. ..	JJ	89	3 7 5	—
Croydon 3% 1940-60 .. ..	AO	96½	3 2 2	3 4 4
Essex County 3½% 1952-72 .. ..	JD	103½	3 7 8	3 4 4
Leeds 3% 1927 or after .. ..	JJ	86½	3 9 4	—
Liverpool 3½% Redeemable by agree- ment with holders or by purchase ..	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp. MJSD		75½	3 6 3	—
London County 3% Consolidated Stock after 1920 at option of Corp. MJSD		85	3 10 7	—
Manchester 3% 1941 or after .. ..	FA	87	3 9 0	—
Metropolitan Consol. 2½% 1920-49 ..	MJSD	95	2 12 8	3 0 0
Metropolitan Water Board 3% "A" 1963-2003 .. ..	AO	85½	3 10 2	3 11 6
Do. do. 3% "B" 1934-2003 .. ..	MS	88	3 8 2	3 9 3
Do. do. 3% "E" 1953-73 .. ..	JJ	95	3 3 2	3 4 9
Middlesex County Council 4% 1952-72 ..	MN	109	3 13 5	3 5 5
* Do. do. 4½% 1950-70 .. ..	MN	110½	4 1 5	3 10 8
Nottingham 3% Irredeemable .. ..	MN	86½	3 9 4	—
Sheffield Corp. 3½% 1968 .. ..	JJ	103½	3 7 8	3 6 4

### ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS

Gt. Western Rly. 4% Debenture .. ..	JJ	105	3 16 2	—
Gt. Western Rly. 4½% Debenture .. ..	JJ	114½	3 18 7	—
Gt. Western Rly. 5% Debenture .. ..	JJ	125½	3 19 8	—
Gt. Western Rly. 5% Rent Charge .. ..	FA	121½	4 2 4	—
Gt. Western Rly. 5% Cons. Guaranteed ..	MA	118½	4 4 5	—
Gt. Western Rly. 5% Preference .. ..	MA	110½	4 10 6	—
Southern Rly. 4% Debenture .. ..	JJ	103½	3 17 4	—
Southern Rly. 4% Red. Deb. 1962-67 ..	JJ	108	3 14 1	3 10 3
Southern Rly. 5% Guaranteed .. ..	MA	118½	4 4 5	—
Southern Rly. 5% Preference .. ..	MA	108½	4 12 2	—

\*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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